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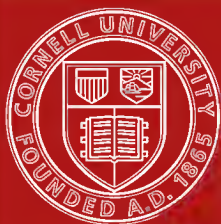
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JOHN'S
AMERICAN NOTARY
AND
COMMISSIONER OF DEEDS
MANUAL

**THE GENERAL AND STATUTORY REQUIREMENTS OF THESE
OFFICERS PERTAINING TO ACKNOWLEDGMENTS,
AFFIDAVITS, OATHS, DEPOSITIONS AND
PROTESTS, WITH FORMS**

THIRD EDITION
BY
FREDERICK M. HINCH

CHICAGO
CALLAGHAN & COMPANY
1922

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PREFACE

While lawyers are usually disposed to give attention to detail and form in the execution of instruments and the performance of their duties, their efforts along this line do not meet with favor as a general rule, because there exists a prevailing, and unfortunately gradually increasing, tendency among American citizens in general to ignore or evade such matters of form. Most lawyers are notaries, but it does not follow that all notaries are lawyers, and it is to this latter class that this work is particularly addressed. In the performance of a notary's duties, temptations are many, and the greatest temptation is the one continually presented, that the work is unimportant, that it is a mere "matter of form," and that no penalty, liability or improper result will occur, even if details are disregarded, and the work done hurriedly and carelessly. Contrary to the general impression, it may be stated here, though it is also repeated in the work itself, that the performance of a notary's duty is of the utmost importance, that it requires the greatest attention to detail, and that negligence in any form is absolutely prohibited.

In an effort to impress this fact, this edition of the work has been elaborated extensively insofar as it deals with the liabilities of notaries, both civil and criminal, and at the risk of repetition, the penalties of neglect, misconduct and malconduct are continually referred to. This extension has necessitated elaboration in the concurrent matter of the manner of performance of a notary's duty, and such matters as taking acknowledgments or administering oaths over the telephone, the necessity of the presence of the person acknowledging or the affiant, the manner of writing certificates, and mistakes made in such certificates, and all similar matters, have been stated in detail.

In the writing of the text, language of common usage has been used, and the intricate, technical legal matters, or words and phrases, have been avoided, as far as possible. When necessary, the legal terms used have been defined, and a reference to the index will show the extensions in this regard. It is sincerely hoped that this style will in no way detract from the work, and that it will be of great value to the notaries who are lawyers as well as those who are not.

The book has been completely revised, re-annotated, re-compiled and re-indexed. In so doing the author must join with the general public in praising the original work by Edward Mills John of the Chicago Bar, a book of such merit as to be internationally famous. In this third edition credit is due to the Cyclopedic Law dictionary, for many valuable definitions, to Warvelle on Abstracts, 4th ed., for references to portions of that work dealing with mistakes in the execution of instruments, showing that examiners of title discover mistakes of notaries, and to Bays Commercial Law, a work which has been of material assistance as showing the proper manner of the execution of instruments, how real estate is sold, and similar matters.

FREDERICK M. HINCH.

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NOTARIES PUBLIC.

CHAPTER I.

THE OFFICE AND ITS REQUIREMENTS.

§ 1. **Definition.**—A notary or notary public is an officer appointed by the executive or other appointing power, under the laws of different states, having power generally to attest writings for the purpose of establishing their authenticity, to administer oaths, and to perform similar duties.¹

§ 2. **Origin and History.**—Notaries are of ancient origin, long known to the civil and common law. Originally he was a mere scribe, taking notes or minutes, and making drafts of writings and public instruments,² but his duties were extended with the growth of commerce, and became more frequent in attestation and authentication of instruments peculiar to maritime law, or the law merchant. At this day, in most countries, a notary public is one who publicly attests deeds or writings, to make them authentic in another country; but principally in business relating to merchants.³

¹ Cyc. Law Dict. 636.

A notary is an officer whose duty it is to attest the genuineness of deeds or writings in order to render them available as evidence of the facts therein contained; a public functionary authorized to receive all acts and contracts to which parties wish to give the character of authenticity, attached to the act of public authority. *Nolan v. Labatut*, 117 La. 431, 41 So. 713.

² *Carroll v. State*, 58 Ala. 396;

Gharst v. St. Louis Transit Co., 115 Mo. App. 403, 91 S. W. 453.

Notarius in English law is a notary; in civil law, one who took notes or draughts in shorthand of what was said by another, or of proceedings in the senate or in a court. One who draughted written instruments, wills, conveyances, etc. Cyc. Law Dict. 636.

³ *Carroll v. State*, 58 Ala. 396; *Kirksey v. Bates*, 7 Port. (Ala.) 529.

Officers whose duties correspond closely to those of notaries public are traceable to the Roman Republic, although their duties differ very largely now.⁴

The office was known in England before the Conquest,⁵ and is mentioned in the statutes enacted during the reign of Edward the Third.⁶ The English notary is an ecclesiastical officer, although his duties are mainly secular, having at one time been appointed by the Popes, which right was subsequently denied by the kings who assumed their control.⁷

In Scotland, papal and imperial notaries practiced until 1469, when an act was passed declaring that notaries should be made by the King. It appears, however, that for some time afterwards, there were both legal and clerical notaries. In 1563, it was declared by law that no person should take on the office, under pain of death, unless created by the sovereign's special letters, and thereafter examined and admitted by the lords of session. The position of notary is somewhat higher in Scotland than in England.

The Frankish kings at an early date appointed them.

In France they have always been important personages, having been appointed by the King and also the Popes. In France, notaries receive all acts and contracts to which the parties thereto must give or desire to give the authenticity attached to the acts of public authority; they certify the date, preserve the originals and give copies or duplicates. They are nominated by the president of the republic on the recommenda-

⁴ In Roman law the notarius was originally a slave or freedman who took notes of judicial proceedings in shorthand. The modern notary corresponds rather to the tabellio or tabellarius than to the notarius. *Encyclopedia Britannica* (11th Ed. XIX), p. 822.

⁵ "The office originated in the early Roman jurisprudence, and was known in England before the Conquest." *Teutonia Loan & Building Co. v. Turrell*, 19 Ind. App. 469, 49 N. E. 852, 65 Am. St. Rep. 419.

⁶ Statute of Provisors, 25 Edward III, 4.

The office is mentioned in Shakespeare's *Merchant of Venice*.

⁷ Notaries are nominated, since the Peterpence Dispensations Act, 1533-1534, by the archbishop of Canterbury, through the master of faculties (now the judge of the provincial courts of Canterbury and York). *Encyclopedia Britannica* (11th Ed. XIX), p. 822; *Opinion of Justices*, 150 Mass. 586, 23 N. E. 850, 6 L. R. A. 842.

tion of the keeper of the seals, must not engage in business, and serve an apprenticeship before being appointed.

In Italy during the Middle Ages they were appointed by the Emperor or the Pope.

In Germany, in some states the notarial office is combined with that of advocate, in other states there are no notaries, and in most states, the office forms a distinct class.

§ 3. Notaries in the United States.—In the United States, notaries are state officers, usually appointed by the governor. The manner of appointment, powers and duties, and liabilities are regulated by statutes, and differ but slightly in the various states and territories.

§ 4. Notaries as Public Officers.—Because of the credence which all civilized nations attach to the attestation and authentication of acts by notaries to facilitate commercial intercourse, it is said that he is an officer known to the law of nations.⁸

In a large number of decisions of courts of last resort, notaries have been recognized as public officers,⁹ and because

⁸ *Kirksey v. Bates*, 7 Port. (Ala.) 529.

“A notary public is considered not merely an officer of the country where he is admitted or appointed, but as a kind of international officer, whose official acts, performed in the state for which he is appointed, are recognized as authoritative the world over.” *Wood v. St. Paul City Ry. Co.*, 42 Minn. 411, 44 N. W. 308, 7 L. R. A. 149.

⁹ *Carroll v. State*, 58 Ala. 396; *Kirksey v. Bates*, 7 Port. (Ala.) 529; *State v. Hodges*, 107 Ark. 272, 154 S. W. 506; *Sonfield v. Thompson*, 42 Ark. 46, 48 Am. Rep. 49; *Ashcraft v. Chapman*, 38 Conn. 232; *Ohio Nat. Bank of Washington v. Hopkins*, 8 App. Cas. (D. C.) 146; *Smith v. Meador*, 74 Ga. 416, 58 Am. Rep. 438; *Keeney v. Leas*, 14 Iowa 464; *Emmerling v. Gra-*

ham, 14 La. Ann. 389; *Opinion of Justices*, 150 Mass. 586, 23 N. E. 850, 6 L. R. A. 842; *State v. Zehnder*, 182 Mo. App. 161, 168 S. W. 661; *In re Opinion of Justices*, 73 N. H. 621, 62 Atl. 969, 5 L. R. A. (N. S.) 415, 6 Ann. Cas. 283; *People v. Rathbone*, 145 N. Y. 434, 40 N. E. 395, 28 L. R. A. 384; *State v. Clarke*, 21 Nev. 335, 31 Pac. 545, 18 L. R. A. 313; 37 Am. St. Rep. 517; *Attorney General v. Knight*, 169 N. C. 333, 85 S. E. 418, L. R. A. 1915F 898, Ann. Cas. 1917D 517; *Nicholson v. Eureka Lumber Co.*, 160 N. C. 33, 75 S. E. 730, Ann. Cas. 1914C 202; *State v. Adams*, 58 Ohio St. 612, 51 N. E. 135, 11 L. R. A. 727, 65 Am. St. Rep. 792; *Clapp v. Miller*, 56 Okla. 29, 156 Pac. 210, 11 N. C. C. A. 581; *Butts v. Purdy*, 63 Ore. 150, 125 Pac. 313, 127 Pac. 25; *State v. Davidson*,

of this fact women have been held disabled from holding such offices.¹⁰ Becoming important to the commercial world, their appointment was provided for and their duties regulated by public law, and they became sworn public officers,¹¹ recognized as necessary in nearly all civilized countries.

§ 5. Notaries as Agents.—The employment of a notary to take an acknowledgment does not constitute him an agent.¹² In protesting notes, notaries act independently for the owner of the note they protest, and not as agent of the bank placing the same in their hands.¹³ The act is rather an official duty, than the employment of an agent,¹⁴ and, in general, notaries do not act as agents. The purchaser of property who, without authority, pays the price into the hands of the notary, incurs the risk of the deposit, and if the notary embezzle the money, the purchaser must sustain the loss.¹⁵ Of course, the relation of principal and agent may exist under certain circumstances, and a bank is liable for the acts of a notary when he acts as its agent.¹⁶

92 Tenn. 531, 22 S. W. 203, 20 L. R. A. 311; *Pierce v. Indseth*, 106 U. S. 546, 27 L. Ed. 254, 1 Sup. Ct. 418; *Britton v. Niccolls*, 104 U. S. 766, 26 L. Ed. 918; *Bettman v. Warwick*, 47 C. C. A. 185, 108 Fed. 47.

A notary public is a public officer and cannot be the agent of either party. *Cason v. Cason*, 116 Tenn. 173, 93 S. W. 89.

¹⁰ See post, § 9. Women as Notaries.

¹¹ In re Opinion of Justices, 73 N. H. 621, 62 Atl. 969, 5 L. R. A. (N. S.) 415, 6 Ann. Cas. 283.

¹² *Borchers v. Barckers*, 158 Mo. App. 267, 138 S. W. 555; *Ely Walker Dry Goods Co. v. Smith*, — Okla. —, 160 Pac. 898.

¹³ *First Nat. Bank v. Butler*, 41 Ohio St. 519, 52 Am. Rep. 94. See *Ohio Nat. Bank of Washington v. Hopkins*, 8 App. Cas. (D. C.) 146.

¹⁴ See post, §§ 21, 36.

Notaries are liable for negligence to the holder for commercial paper placed in their hands for protest by a bank. The bank is not liable in such cases. *Bowling v. Arthur*, 34 Miss. 41; *Tiernan v. Commercial Bank of Natchez*, 7 How. (Miss.) 648, 40 Am. Dec. 83; *First Nat. Bank v. Butler*, 41 Ohio St. 519, 52 Am. Rep. 94; *City Nat. Bank of Dayton v. Clinton County Nat. Bank*, 49 Ohio St. 351, 30 N. E. 958; *First Nat. Bank of Manning v. German Bank*, 107 Iowa 543, 78 N. W. 195, 44 L. R. A. 133, 70 Am. St. Rep. 216.

¹⁵ *Brown v. Schmidt*, 7 La. Ann. 349; *Saloy v. Hibernia Nat. Bank*, 39 La. Ann. 90, 1 So. 657.

¹⁶ *Wood River Bank v. First Nat. Bank of Omaha*, 36 Neb. 744, 55 N. W. 239.

§ 6. Appointment.—In the United States, appointments of notaries are usually made by the governor, and in many states the advice and consent of the senate or council is necessary.¹⁷ In England they are appointed by the Court of Faculties and are obliged to serve an apprenticeship of five years, and then furnish a certificate from two notaries stating fitness for the office. A penalty is imposed for acting without authority. In London seven years' apprenticeship is required. The duties are similar to those in the United States. On the continent of Europe they are appointed by the executive.

§ 7. Commission or Certificate of Authority; Duty to Issue.—A notary's official authority to act, or certificate of appointment is represented by his commission, which is issued on the filing of his bond and oath of office, and for which a fee, varying in the different states, is required. The commission is signed by the appointing power, and the issuance of a commission is essential to the completeness of the appointment.¹⁸ Usually the commission is issued by the secretary of state after the appointment is made. In states where this plan is followed, the issuance of the commission is a ministerial act, and if the secretary refuses to perform the duty, he may be compelled to do so by a writ of mandamus.¹⁹

§ 8. Eligibility and Qualifications.—Persons are eligible to the office of a notary if they possess the qualifications usually required of public officers. In general they must be of legal age, citizens of the state, and persons of good moral character.²⁰ If there is no provision in the constitution or statutes of a state making an infant, a person who has not attained the age of twenty-one years, ineligible to the office of notary, such a minor may hold the office. This is upon the theory that the office is ministerial, and does not concern the administration of justice, which offices might be held by infants at the common law.²¹

¹⁷ See post, §§ 37-90.

¹⁸ *Draper v. State*, 175 Ala. 547, 57 So. 772, Ann. Cas. 1914D 301.

¹⁹ *State v. Hodges*, 107 Ark. 272, 154 S. W. 506; *State v. Lyon*, 63 Okla. 285, 165 Pac. 419.

²⁰ See post, §§ 37-90.

²¹ *United States v. Bixby*, 9 Fed. 78. See *Freeman v. Port Arthur Rice & Irrigation Co.*, — Tex. Civ. App. —, 188 S. W. 444, where an affidavit taken by a notary under ²¹ was held not defective.

An alien who secures the commission of notary and otherwise qualifies, has been held to be a *de facto* officer.²²

Some of the statutes expressly require an applicant for a commission as notary to prove his qualifications, and to secure the recommendation of certain officers. The statutes vary largely in this respect, but, even in the absence of statute, the matter rests in the discretion of the appointing officer, and commissions are not issued in a haphazard manner. Frequently, rules are promulgated by the appointing officer, such as the governor, which rules operate in the same manner as statutory requisites, and compel the applicant to procure the recommendation of responsible citizens, and otherwise prove his ability and character.²³

§ 9. Women as Notaries.—At the common law, women were disabled from holding public office, and because the place of a notary public is a public governmental office, women have been held ineligible for the position.²⁴ The question is one involving constitutional law, as the constitutions of the various states frequently contain provisions respecting the qualifications of public officers, or specifically naming notaries. Under such provisions the legislatures have been held unable to authorize the appointment of women.²⁵ Thus, statutes enacted in some of the states authorizing the appointment of women as notaries have been held invalid, because such women were not electors, and public officers are required to be electors.²⁶ In the absence of constitutional restriction, it has been held that the legislature has full power to abolish the common-law rule, and to

²² See § 16, post.

²³ See *Pilkington v. Potwin*, 163 Iowa 86, 144 N. W. 39, where a notary's commission was denied temporarily because of the failure to submit the recommendation required by the rules of the governor's office.

Statutory requirements, see §§ 37-90, post.

²⁴ In re Opinion of Justices, 73 N. H. 621, 62 Atl. 969, 5 L. R. A. (N. S.) 415, 6 Ann. Cas. 283; Opin-

ion of Justices, 150 Mass. 586, 23 N. E. 850, 6 L. R. A. 842.

²⁵ In re Opinion of Justices, 165 Mass. 599, 43 N. E. 927, 32 L. R. A. 350.

²⁶ *State v. Hodges*, 107 Ark. 272, 154 S. W. 506; *State v. Adams*, 58 Ohio St. 612, 51 N. E. 135, 11 L. R. A. 727, 65 Am. St. Rep. 792; *Attorney General v. Knight*, 169 N. C. 333, 85 S. E. 418, L. R. A. 1915 F 898, Ann. Cas. 1917D 517.

provide for the appointment of women as notaries,²⁷ although it seems that express legislative enactments are necessary before women may be appointed.²⁸

In some states, it has been held, however, where the office was created by statute, that women might be appointed, there being no provision excluding them,²⁹ and elsewhere the acts of a woman notary have been held not subject to collateral attack; that she was a *de facto* officer, whose acts could not be objected to by third persons.³⁰

Regardless of the earlier decisions, many states have now enacted statutes specifically authorizing the appointment of women as notaries,³¹ and with the advent of women's suffrage, rendering them electors, and placing them on an equality with men, it may be stated that these disqualifications because of sex have been removed; that women are now, or will be in a very short time, fully eligible to this office in all of the states.

§ 10. Incompatible Offices.—The office of a notary may be incompatible with other offices and duties. Thus, under a constitutional provision providing that anyone holding a lucrative office under the government of the United States, or any other power, shall be ineligible to any civil office of profit in the state, it has been held that a notary public became incompetent to retain his office when appointed to another federal lucrative office.³² Some statutes also prohibit notaries from holding such lucrative offices, and the acceptance of the incompatible office operates to vacate the notary's office.³³ In the

²⁷ In re Opinion of Justices, 78 N. H. 621, 99 Atl. 999, L. R. A. 1917D 286. See Terry v. Klein, 133 Ark. 366, 201 S. W. 801.

²⁸ Third Nat. Bank of Chattanooga v. Smith (Tenn.), 47 S. W. 1102; State v. Davidson, 92 Tenn. 531, 22 S. W. 203, 20 L. R. A. 311.

²⁹ Harbour-Pitt Shoe Co. v. Dixon, 22 Ky. L. Rep. 1169, 60 S. W. 186.

³⁰ Third Nat. Bank of Chattanooga v. Smith (Tenn.), 47 S. W. 1102; Nicholson v. Eureka Lumber Co., 160 N. C. 33, 75 S. E. 730, Ann.

Cas. 1914C 202; Van Dorn v. Mengedocht, 41 Neb. 525, 59 N. W. 800.

³¹ State v. Davidson, 92 Tenn. 531, 22 S. W. 203, 20 L. R. A. 311. See post, §§ 37-90.

³² State v. Clarke, 21 Nev. 333, 31 Pac. 545, 18 L. R. A. 313, 37 Am. St. Rep. 517; Biencourt v. Parker, 27 Tex. 558.

³³ The position of a deputy auditor of a county is a lucrative office within a statute, so that the acceptance of such office vacates the notary's office. Sharp v. State, 54 Ind. App. 182, 99 N. E. 1072.

same way, notaries may be disqualified from acting when a transaction is involved in which they are personally interested.³⁴

A person holding a subordinate office as messenger or librarian in the office of a district attorney has been held not prevented from also acting as a notary public, as the offices were not incompatible.³⁵ Similarly, the office of deputy county clerk and that of notary have been held not incompatible.³⁶ And a county attorney has been held not disqualified from being a notary, although a constitutional provision existed preventing officers from holding two positions.³⁷

§ 11. Oath of Office.—Like other public officers, notaries are usually required to take an oath of office. Such oath is usually subscribed by the notary and attached to the bond, when filed. The failure of a notary to properly take his oath may render him a mere *de facto* officer.³⁸

§ 12. Bond.—Notaries are usually, if not always, required to file a bond for a given sum, with sureties, approved by some state officer, usually the secretary of state, assuring the faithful performance of their duties.³⁹

In Louisiana, notaries public continue in office so long as they renew their bonds, unless suspended by the court. Failure to file their bond with the auditor of public accounts may be a just cause for their suspension.⁴⁰

§ 13. Term of Office.—The term of office of a notary, as fixed by statute, varies in the different states. Usually these officers are appointed at large, and do not succeed any particular notary whose term has expired. Death terminates the office, and there is no vacancy for which another notary may be appointed.⁴¹ In some states, however, they are appointed for a fixed period of time, or until their successors are qualified. Under such a statute it has been held that a notary may continue in the discharge of his duties for a reasonable length of

³⁴ See post, § 21.

³⁵ *Merzbach v. City of New York*, 163 N. Y. 16, 57 N. E. 96.

³⁶ *Friedman v. Craig*, 77 W. Va. 223, 87 S. E. 361.

³⁷ *Figures v. State* (Tex. Civ. App.), 99 S. W. 412.

³⁸ See § 16, post.

³⁹ See § 31 *et seq.*, post.

⁴⁰ *Monroe v. Liebman*, 47 La. Ann. 155, 16 So. 734.

⁴¹ *People v. Edleman*, 152 Cal. 317, 92 Pac. 846.

time after his commission has expired, but the hold-over clause of the statute is not to be construed as authorizing unlimited terms.⁴² The question is one involving *de facto* officers,⁴³ and notaries should not perform acts after their term of office has expired, but should immediately seek a renewal of their commission.

§ 14. Removal from Office; Suspension or Forfeiture.—

Where the term of office of a notary is at "the pleasure of the governor," he is subject to removal, but if the statute fixes a definite period of time as his term of office, the governor is powerless to remove the notary until such time expires.⁴⁴ Some statutes contain more or less definite provisions concerning removal, providing for hearing and notice. And in fact the usual proceedings are by a hearing before a referee, after which the governor acts. An appeal to the courts may be had by the removed officer, after the action of the governor.⁴⁵ Such proceedings are usually for some breach of official duty, or malfeasance, and under some statutes, notaries may be suspended for just cause,⁴⁶ and in one state proceedings were brought to forfeit the office for a breach of a constitutional provision prohibiting public officers from accepting free passes.⁴⁷

On removal from office, by expiration of term, death or otherwise, the statutes frequently require the notary or his representative to deposit with some public officer, usually the clerk of the county, all records and papers of an official character, within a certain period after such removal.

§ 15. Officers *Ex Officio* Notaries.—In a number of states, various officers are *ex officio* notaries and have the powers and

⁴² Sandlin v. Dowdell, 143 Ala. 518, 39 So. 279, 5 Ann. Cas. 459.

⁴³ See § 16, post.

⁴⁴ People v. Jewett, 6 Cal. 291. A constitutional provision authorizing the removal of officers at pleasure, if their term was not fixed by the constitution or declared by law, would not apply to notaries whose term of office was fixed at two years. People v. Jewett, 6 Cal. 291.

⁴⁵ Cohn v. Butterfield, 89 Neb. 849, 132 N. W. 400.

⁴⁶ State v. Lareche, 28 La. Ann. 26. In Louisiana, notaries public continue in office so long as they renew their bonds, unless suspended by the court. Failure to file their bond may be just cause for suspension, but the code does not provide for its vacating the office. Monroe v. Liebman, 47 La. Ann. 155, 16 So. 734.

⁴⁷ People v. Rathbone, 145 N. Y. 434, 40 N. E. 395, 28 L. R. A. 384.

duties of regularly appointed notaries. Thus justices of the peace have been held to be *ex officio* notaries under some statutes.⁴⁸ It has been said, however, that foreign governments refuse to recognize the acts of such *ex officio* notaries.⁴⁹

§ 16. **De Facto Notaries.**—A *de facto* officer is one who performs the duties of an office with apparent right, and under claim and color of an appointment, but without being actually qualified in law so to act.⁵⁰ Under this definition, *de facto* notaries may exist, as, where a notary who is commissioned, holds himself out as such, performs the usual acts of a notary, and is reputed to be a notary.⁵¹ The performance of a single act as notary is not sufficient to constitute a notary a *de facto* officer. There must be proof of other acts, or a general recognition of the notary as such.⁵² As instances of *de facto* notaries, are those officers who are appointed and act as notaries but who are ineligible because of sex,⁵³ or who are not citizens,⁵⁴ notaries who are not duly commissioned,⁵⁵ who fail to properly take their statutory oath,⁵⁶ or to file their bond,⁵⁷ who act after

⁴⁸ *Goree v. Wadsworth*, 91 Ala. 416, 8 So. 712; *Dennistoun & Co. v. Potts*, 26 Miss. 13; *Rule v. Richards*, — Tex. Civ. App. —, 149 S. W. 1073; *Gilleland v. Drake*, 36 Tex. 676.

⁴⁹ *Gilleland v. Drake*, 36 Tex. 676.

⁵⁰ *Cyc. Law Dict.* 249.

⁵¹ *Davenport v. Davenport*, 116 La. 1009, 41 So. 240, 114 Am. St. Rep. 575; *Third Nat. Bank of Chattanooga v. Smith* (Tenn.), 47 S. W. 1102.

⁵² *Pilkington v. Potwin*, 163 Iowa 86, 144 N. W. 39; *Hughes v. Long*, 119 N. C. 52, 25 S. E. 743; *Bien-court v. Parker*, 27 Tex. 558.

⁵³ *Third Nat. Bank of Chattanooga v. Smith* (Tenn.), 47 S. W. 1102; *Von Dorn v. Mengedocht*, 41 Neb. 525, 59 N. W. 800.

⁵⁴ An alien who is duly commis-

sioned as a notary and qualifies by giving bond as the law requires, has color of title to the office, and though he does not possess the qualification of citizenship as required by statute, he is a *de facto* officer and his acts as such officer are valid. *Wilson v. Kimmel*, 109 Mo. 260, 19 S. W. 24.

⁵⁵ *Pilkington v. Potwin*, 163 Iowa 86, 144 N. W. 39; *Hamilton v. Pitcher*, 53 Mo. 334.

⁵⁶ *Buckley v. Seymour*, 30 La. Ann. 1341, where a deputy notary took his oath before his principal instead of a justice of the peace, and where it was contended that he had not taken his proper oath.

⁵⁷ Notary duly appointed but who failed to file bond in the manner prescribed by law, is officer *de facto*. *Keeney v. Leas*, 14 Iowa 464.

the expiration of their term,⁵⁸ or who accept incompatible offices, or are disqualified to act because of interest.⁵⁹

As far as the public and third parties are concerned, there is no distinction between the acts of *de facto* and *de jure* officers. The only difference between the two is that the former may be ousted by direct legal proceedings in the nature of quo warranto, and the latter cannot be so ousted.⁶⁰ The acts of a *de facto* notary are not subject to attack at the instance of third parties.⁶¹ If an officer is in his place by appointment or election, and proceeds in the regular discharge of his duties, though he has not in all respects, in qualifying, complied with the statutes, his acts are entitled to credit. The statutes do not declare that the acts of the notary who fails to comply with their provisions shall be null and void, but they provide for a penalty.⁶²

§ 17. Jurisdiction; Place of Performing Duties.—Notaries are usually appointed to act within a certain county,⁶³ or within certain territorial limits designated in their commission,⁶⁴ and in such cases they have no authority to act elsewhere. In many states, however, they are authorized by statute to act in other counties, anywhere in the state.⁶⁵ The state is the limit of their jurisdiction. A notary appointed in one state has no power or authority by virtue of his commission to perform his duties or acts in another state.⁶⁶

§ 18. Delegation of Duties; Deputies and Clerks.—As a gen-

⁵⁸ Sandlin v. Dowdell, 143 Ala. 518, 39 So. 279, 5 Ann. Cas. 459; Smith v. Meador, 74 Ga. 416, 58 Am. Rep. 438; Penn & Watson v. McGhee, 6 Ga. App. 631, 65 S. E. 686.

⁵⁹ Sharp v. State, 54 Ind. App. 182, 99 N. E. 1072; Titus v. Johnson, 50 Tex. 224.

⁶⁰ Sandlin v. Dowdell, 143 Ala. 518, 39 So. 279, 5 Ann. Cas. 459.

⁶¹ Wilson v. Kimmel, 109 Mo. 260, 19 S. W. 24.

⁶² Keeney v. Leas, 14 Iowa 464.

⁶³ A notary cannot act outside of his county. Fairbanks, Morse

& Co. v. Getchell, 13 Cal. App. 458, 110 Pac. 331; T. W. Barhydt & Co. v. G. N. Alexander & Co., 59 Mo. App. 188; Allgood v. State, 87 Ga. 668, 13 S. E. 569.

⁶⁴ Com. v. Schwieters, 29 Ky. L. Rep. 417, 93 S. W. 592.

⁶⁵ Guertin v. Mombteau, 144 Ill. 32, 33 N. E. 49; Lamb v. Lamb, 139 Mich. 166, 102 N. W. 645; Sullivan v. Hall, 86 Mich. 7, 48 N. W. 646, 13 L. R. A. 556; Neely v. Morris, Tanner & Co., 2 Head (Tenn.) 595, 75 Am. Dec. 753.

⁶⁶ Harris' Lessee v. Burton, 4 Har. (Del.) 66.

eral rule, the authority of a notary cannot be delegated and he cannot appoint a deputy or clerk.⁶⁷ He must perform the acts required himself, and is even prevented from having a duty intrusted to him performed by another notary.⁶⁸ In some states, deputies are permitted by statute, however,⁶⁹ and a custom may exist whereby the acts of notaries are performed by clerks.⁷⁰

§ 19. Powers and Duties in General.—The powers of a notary public, which is a very ancient office, are largely founded on customary law.⁷¹ He is recognized as a necessary official in nearly all civilized countries. He is recognized by the law merchant, and his official acts are received as evidence, not only in his own but in all countries. His duties are often of great variety and importance, consisting, for the most part, in protesting inland and foreign bills of exchange, promissory notes, authenticating their dishonor by the refusal of the drawee to accept or pay them on presentation or when due. Also the authentication of transfers to property, administering the oath as to the correctness of accounts or statements of important documents, which are often necessary for transmission to points where the parties directly in interest are unable to appear in person; the taking of depositions for actions pending in foreign or distant courts; the taking of the affidavits of mariners and masters of ships, their protests, etc., requiring care and judgment. In all such cases the notary's certificate or jurat, when accompanied with his official seal of office and proper certificates of his official character, if the act is to be used beyond his own county or state, is received as *prima facie* evidence.⁷²

⁶⁷ *Ocean Nat. Bank v. Williams*, 102 Mass. 141; *Cribbs v. Adams*, 13 Gray (79 Mass.) 597; *Smith v. Gibbs*, 2 Smedes & M. (Miss.) 479; *Gawtry v. Doane*, 51 N. Y. 84.

⁶⁸ *Commercial Bank v. Barksdale*, 36 Mo. 563.

⁶⁹ See *Buckley v. Seymour*, 30 La. Ann. 1341.

⁷⁰ *Miltenberger v. Spaulding*, 33 Mo. 421; *Cribbs v. Adams*, 13 Gray (79 Mass.) 597. The existence of a custom whereby notaries may em-

ploy deputies or clerks is a fact to be proved. *Cribbs v. Adams*, 13 Gray (79 Mass.) 597.

⁷¹ *Wood v. St. Paul City Ry. Co.*, 42 Minn. 411, 44 N. W. 308, 7 L. R. A. 149.

⁷² A notary public is an officer known to the law of nations and his official acts receive credence, not only in his own country, but in all others in which they are used as instruments of evidence. *Kirksey v. Bates*, 7 Port. (Ala.) 529.

Usually the statutes determine and state the extent of the powers of notaries, and generally they are empowered to take acknowledgments, administer oaths, take depositions, protest and perform duties with respect to commercial paper, etc.⁷³ If a statute provides what officers may take acknowledgments, and does not include notaries, such an acknowledgment by a notary is of no effect.⁷⁴ The statutes should always be consulted in determining what powers notaries of a given state possess. In the performance of duties, relating to depositions, acknowledgments and the administering of oaths, notaries frequently have the powers of justices of the peace.⁷⁵ In some states they are *ex officio* justices of the peace,⁷⁶ and in some states they may imprison witnesses for contempt.⁷⁷ In Louisiana, the powers and duties of notaries are very extensive.⁷⁸ In West Virginia, notaries are conservators of the peace. The authority of notaries as conservators of the peace, when not otherwise prescribed by statute, is limited to the powers possessed by such conservators at common law. Such duties included the power to prevent and arrest for breaches of the peace, but not to arraign and try the offender.⁷⁹

It is no part of the notary's duty to receive money from or for anybody.⁸⁰

§ 20. Importance of Office.—From the manner of appointment of notaries, a consideration of their powers and duties, and the fact that their certificates are received as *prima facie* evidence of their acts, it must be noted that the office is of

⁷³ See post, §§ 37-90. See also, in general as to these powers, the various chapters relating to the subject involved.

⁷⁴ Partridge v. Mechanics' Nat. Bank of Burlington, 77 N. J. Eq. 208, 77 Atl. 410.

⁷⁵ In re Opinion of Justices, 73 N. H. 621, 62 Atl. 969, 5 L. R. A. (N. S.) 415, 6 Ann. Cas. 283.

⁷⁶ Douglass v. State, 117 Ala. 185, 23 So. 142.

⁷⁷ See post, ch. IV.

⁷⁸ See Schmitt v. Drouet, 42 La. Ann. 1064, 8 So. 396, 21 Am. St.

Rep. 408; In re Collins, 235 Fed. 937.

⁷⁹ Howell v. Wysor, 74 W. Va. 589, 82 S. E. 503, Ann. Cas. 1916C 519.

⁸⁰ Heidt v. Minor, 89 Cal. 115, 26 Pac. 627; Detroit Sav. Bank v. Ziegler, 49 Mich. 157, 13 N. W. 496, 43 Am. Rep. 456; Doran v. Butler, 74 Mich. 643 (People v. Butler), 42 N. W. 273; Feller v. Gates, 40 Ore. 543, 67 Pac. 416, 56 L. R. A. 630, 91 Am. St. Rep. 579.

See ante, § 5. Notaries as Agents.

great importance. In the performance of many duties, the notary is required to personally know the parties with whom he is dealing. He is frequently required to thoroughly explain the instruments signed in his presence, and to protect not only the interests of such subscribers, and those immediately present, but also the interests of others who are required to review or rely upon his statements. Carelessness or mistakes of a notary may cause grave complications, subjecting that officer not only to the disgrace of removal from office, but also to penalties, punishment for crime, and civil liability for damages, a matter which involves his bondsmen as well as himself. Notaries should be familiar with the law, if possible, and should have a thorough acquaintance with the instruments that they authenticate, the proper days for execution of the same, so that acts are not performed on legal holidays, and in general with all the requisites of commercial paper, deeds, powers of attorney, depositions, etc.⁸¹

§ 21. Disqualification Because of Interest in Transaction, or Relationship to Parties.—It has been held that the probate of a deed of trust before a notary public who is a preferred creditor, is invalid, upon the principle of the common law that no one can sit in judgment upon his own cause,⁸² and as a general proposition an officer who is a party to an instrument, or interested therein, is disqualified from taking an acknowledgment.⁸³ This is a rule of public policy arising because of the

⁸¹ "Their responsibility is as high as their trust, and a notary who officially certifies as true what he knows to be false violates his duty, commits a crime, binds himself and binds his sureties." *Rochereau v. Jones*, 29 La. Ann. 82.

"Notaries are intrusted with high and important functions. Their certificates are made authentic evidence of titles by which we hold our lands, and by which they pass from one to another, and which endure from generation to generation." *State v. Ogden*, 187 Mo. App. 39, 172 S. W. 1172.

See post, § 31 *et seq.*

⁸² *Long v. Crews*, 113 N. C. 256, 18 S. E. 499.

⁸³ *Southern Iron & Equipment Co. v. Voyles*, 138 Ga. 258, 75 S. E. 248, 41 L. R. A. (N. S.) 375, Ann. Cas. 1913D 369; *Bardsley v. German-American Bank*, 133 Iowa 216, 84 N. W. 1041; *Horbach v. Tyrrell*, 48 Neb. 514, 67 N. W. 485, 37 L. R. A. 434; *Watts v. Whetstone*, 79 S. C. 357, 60 S. E. 703; *W. C. Belcher Land Mortgage Co. v. Taylor*, — Tex. Civ. App. —, 173 S. W. 278; *Bowden v. Parrish*, 86 Va. 67, 9 S. E. 616, 19 Am. St. Rep. 873.

probative force attached to the notary's certificate.⁸⁴ The question of what interest or relationship will disqualify a notary from acting in a transaction is, however, a rather difficult one, depending upon the facts of each case.⁸⁵ Usually agents or attorneys are not disqualified unless financially interested in the transaction involved,⁸⁶ although attorneys who are notaries are frequently disqualified from taking the oaths of their clients.⁸⁷ Stockholders who are beneficially interested have been held disqualified from acting as notaries,⁸⁸ although other decisions hold that they are qualified.⁸⁹ Officers of a corporation who are beneficially interested, but who are not stockholders, are not disqualified.⁹⁰ In some states, the statutes prohibit a stockholder, director, cashier or other officer of a bank from also exercising the office of notary,⁹¹ and in other states,

⁸⁴ *Southern Iron & Equipment Co. v. Voyles*, 138 Ga. 258, 75 S. E. 248, 41 L. R. A. (N. S.) 375, Ann. Cas. 1913D 369.

⁸⁵ *Horbach v. Tyrrell*, 48 Neb. 514, 67 N. W. 485, 37 L. R. A. 434.

⁸⁶ *Vizard v. Robinson*, 181 Ala. 349, 61 So. 959; *Nichols v. Howson*, 94 Ark. 241, 126 S. W. 830; *Smith v. Ayden Lumber Co.*, 144 N. C. 47, 56 S. E. 555.

⁸⁷ See post, § 99.

⁸⁸ *Maddox v. Wood*, 151 Ala. 157, 43 So. 968; *Hayes v. Southern Home Building & Loan Ass'n*, 124 Ala. 663, 26 So. 527, 82 Am. St. Rep. 216; *Patton v. Bank of Lafayette*, 124 Ga. 965, 53 S. E. 664, 5 L. R. A. (N. S.) 592, 4 Ann. Cas. 639; *Betts-Evans Trading Co. v. Bass*, 2 Ga. App. 718, 59 S. E. 8; *Smith v. Clark*, 100 Iowa 605, 69 N. W. 1011. See *Moreland's Assignee v. Citizens' Sav. Bank*, 97 Ky. 211, 30 S. W. 637.

⁸⁹ *Davis v. Hale*, 114 Ark. 426, 170 S. W. 99, Ann. Cas. 1916D 701; *First Nat. Bank of Riverside v. Merrill*, 167 Cal. 392, 139 Pac. 1066;

Read v. Toledo Loan Co., 68 Ohio St. 280, 67 N. E. 729, 62 L. R. A. 790, 96 Am. St. Rep. 663; *Kee v. Ewing*, 17 Okla. 410, 87 Pac. 297; *Keene Guaranty Sav. Bank v. Lawrence*, 32 Wash. 572, 73 Pac. 680.

⁹⁰ *Bank of Woodland v. Oberhaus*, 125 Cal. 320, 57 Pac. 1070; *Florida Sav. Bank & Real Estate Exchange v. Rivers*, 36 Fla. 575, 18 So. 850. See *Horbach v. Tyrrell*, 48 Neb. 514, 67 N. W. 485, 37 L. R. A. 434, where it did not appear that the notary was a stockholder, though he was the secretary and treasurer of the corporation interested, and where the notary was held competent to act.

A local agent of a mortgagee is not disqualified when not shown to be a stockholder, or beneficially interested. *Girard Trust Co. v. Null*, 90 Neb. 713, 134 N. W. 272.

⁹¹ *Spegal v. Krag-Reynolds Co.*, 21 Ind. App. 205, 51 N. E. 959; *First Nat. Bank v. Butler*, 41 Ohio St. 519, 52 Am. Rep. 94. See *Com. v. Pyle*, 18 Pa. St. 519.

See post, §§ 51, 75.

such acknowledgments have been rendered valid by statute.⁹² Still other decisions hold the act of an interested official as notary voidable, and it will be set aside on proof of fraud, oppression or undue advantage.⁹³

The general rule deducible is that a notary who is directly interested in the subject-matter involved should not act as notary.⁹⁴ A partner cannot take the oath of his copartner, in a matter in which the firm is interested.⁹⁵ But, a notary public having acted as agent in obtaining a loan on property for a party is not disqualified from taking the party's acknowledgment to the mortgage on the property.⁹⁶ A notary having acted as such for claimant violates no law by acting subsequently in the same matter as the claimant's attorney.⁹⁷ In one case where a homestead was sold and oral directions given that the consideration received should be paid to creditors, and the acknowledgment of the deed required was taken by a notary who was also a creditor, but who was not instrumental in causing the sale, or the giving of the oral directions, the notary was held not disqualified, although he received part of the money as a creditor.⁹⁸

Ordinarily, relationship of the notary to the party involved does not prevent him from acting. Thus a notary has been held not disqualified from administering an oath to his father,⁹⁹ and the fact that a notary was the brother-in-law of a mortgagee has been held not to disqualify him from taking an acknowledgment to the mortgage.¹ In Vermont, an officer is

⁹² *Maxwell v. Lincoln, etc.*, Building & Loan Ass'n, 216 Ill. 85, 74 N. E. 804; *Ogden Building & Loan Ass'n v. Mensch*, 196 Ill. 554, 63 N. E. 1049, 89 Am. St. Rep. 330; *Sawyer v. Cox*, 63 Ill. 130.

⁹³ *Cooper v. Hamilton Perpetual Building & Loan Ass'n*, 97 Tenn. 285, 37 S. W. 12, 33 L. R. A. 338, 56 Am. St. Rep. 795.

⁹⁴ See *Bardsley v. German-American Bank*, 113 Iowa 216, 84 N. W. 1041.

⁹⁵ *Smalley v. Bodinus*, 120 Mich. 363, 79 N. W. 567, 77 Am. St. Rep. 602.

⁹⁶ *Penn v. Garvin*, 56 Ark. 511, 20 S. W. 410.

⁹⁷ *Sullivan v. Hall*, 86 Mich. 7, 48 N. W. 646, 13 L. R. A. 556.

⁹⁸ *Mudra v. Groeling*, 89 Neb. 829, 132 N. W. 389.

⁹⁹ *Kirkland v. Ferris*, 145 Ga. 93, 88 S. E. 680.

¹ *Hinton v. Hall*, 166 N. C. 477, 82 S. E. 847.

not disqualified from acting when he is beyond the fourth degree of relationship to the parties.²

§ 22. Record of Acts.—Notaries are usually required to keep a record of their official acts, especially the protesting of commercial paper, with service of notice of the same, the names of the parties interested, and a description of the paper protested.³ Such records are deposited with certain other officials in case of removal from office. It has been held that a notary's record is a public record,⁴ and entries in such record book are evidence of his acts after death.⁵ But, if alive, the record is incompetent to prove facts involved. In such case the notary should be called as a witness. He may refer to the record for his own satisfaction in testifying.⁶

§ 23. Certificate.—The acts performed by a notary public are shown by his official certificate or jurat. A certificate has been defined as "a written statement, by a person having an official or public status, concerning some matter within his knowledge or authority." A jurat is that part of an affidavit where the officer certifies that the same was "sworn" before him, and when and where.⁷ Such certificates are competent to establish the facts involved,⁸ if properly executed. Usually the certificate must be properly entitled with the venue of the county where the notary is acting,⁹ must indicate the official character of the notary,¹⁰ and be properly signed by the notary.¹¹ These are general requirements, and the rules respecting the validity of certificates and jurats vary somewhat. As usual the statutory requirements must be carefully noted and

² Reed v. Newcomb, 62 Vt. 75, 19 Atl. 367; Churchill v. Churchill, 12 Vt. 661.

³ See §§ 37-90, post.

⁴ Phillips v. Poindexter, 18 Ala. 579; Bryden v. Taylor, 2 Har. J. (Md.) 396, 3 Am. Dec. 554.

⁵ Nicholls v. Webb, 8 Wheat. (U. S.) 326, 5 L. Ed. 628.

⁶ People's Bank & Trust Co. v. Allen, — N. J. L. —, 110 Atl. 704.

⁷ Cyc. Law Dict.

⁸ Sublette Exch. Bank v. Fitzgerald, 168 Ill. App. 240; Vaughan

v. Potter, 131 Ill. App. 334 (as to protest of bills of exchange); Feigenspan v. McDonnell, 201 Mass. 341, 87 N. E. 624.

See § 28, post, as to effect of certificate.

⁹ Reeves & Co. v. Columbia Sav. Bank, 166 Iowa 411, 147 N. W. 879; Robinson v. Cooper, 62 N. Y. Misc. 517, 115 N. Y. Supp. 599.

¹⁰ Worley v. Adams, 111 Va. 796, 69 S. E. 929.

¹¹ See § 24, post.

adhered to.¹² The certificate must usually be made when the acts referred to are performed. A notary taking an acknowledgment cannot attach his certificate after the lapse of several days, unless he recalls the parties, and again goes through the acknowledgment ceremony.¹³

A certificate not required by law carries no presumption as to authorization or authenticity.¹⁴

§ 24. Signature; Noting Expiration of Commission; Designation of Official Character.—The notary's name must be subscribed to his official certificate, such as a certificate of acknowledgment,¹⁵ or jurat,¹⁶ and should be written in a clear and legible manner. In at least one state, a statute has been enacted requiring, in addition, that the name of the notary be printed, stamped or typewritten, so that there may be no question as to such signature.¹⁷ No penalty is attached for the failure to include such printed signature, but the purpose of the statute is obvious. In this connection the name of the notary is required to appear on his official seal in some states.

Under some statutes, the notary public is required to file his autograph signature with some named official at the time of filing his bond and oath. An omission in this respect has been held to be a mere irregularity not invalidating an acknowledgment.¹⁸

Following the name, the statutes frequently require a notation of the date when the notary's commission expires. Such a statutory provision has been held directory rather than mandatory, so that the omission did not invalidate the certificate.¹⁹ But these are holdings in line with those of the courts which presume the acts of public officials to be correctly performed,

¹² See post, §§ 37-90.

¹³ *Alford v. Doe ex dem.* First Nat. Bank of Gadsden, 156 Ala. 438, 47 So. 230, 22 L. R. A. (N. S.) 216.

¹⁴ *Myerowich v. Emigrant Industrial Sav. Bank*, 170 N. Y. Supp. 38.

¹⁵ *Clark v. Wilson*, 127 Ill. 449, 19 N. E. 860, 11 Am. St. Rep. 143.

¹⁶ *Deputy v. Dollarhide*, 42 Ind.

App. 554, 86 N. E. 344.

¹⁷ See post, § 60.

¹⁸ *In re Townsend*, 195 N. Y. 214, 88 N. E. 41, 22 L. R. A. (N. S.) 194, 16 Ann. Cas. 921.

¹⁹ *Harbour-Pitt Shoe Co. v. Dixon*, 22 Ky. L. Rep. 1169, 60 S. W. 186; *Brown Mfg. Co. v. Gilpin*, 120 Mo. App. 130, 96 S. W. 669; *Sheridan County v. McKinney*, 79 Neb. 223, 115 N. W. 548.

and which will not penalize third persons for the mistakes of officers. In some states, the omission of the date of expiration of the commission may result in the imposition of a penalty, or removal from office.

The notary's certificate must also designate his official character. The characters "N. P." have been held to clearly indicate the office of notary public,²⁰ especially where the notary's official seal was attached.²¹ Also, the words "Notary Public" have been held to indicate the office sufficiently when the body of the acknowledgment certificate also contained the usual statement that the parties appeared "before me, J—— R——, notary public in and for said county."²²

§ 25. **Official Seal.**—A seal is a plate or disc of metal, usually of circular form, having some device engraved upon it, with which an impression may be made on wax or other substance, on paper or parchment, for the purpose of authentication. Of this description are the seals of a government, the seals of courts, of public notaries and other public officers.²³ Notaries' seals are usually of a certain size, circular in form, having engraved thereon in the outer circle the name of the notary, his county and state, and in the inner circle the words, "Notary Public." In some states the state coat of arms is also required. Some statutes contain specific directions as to notaries' seals, and in some states there are no directions, the matter being left to custom.²⁴ The statutes of Nebraska do not require the initials or name of the notary to be engraved on his seal.²⁵

Notaries are always required to provide their own official seal,²⁶ with which they authenticate their official acts.²⁷ The

²⁰ Rowley v. Berrian, 12 Ill. 198; Worley v. Adams, 111 Va. 796, 69 S. E. 929.

²¹ William v. Lobban, 206 Mo. 399, 104 S. W. 58.

²² Duckworth v. Watsonville Water & Light Co., 150 Cal. 520, 89 Pac. 338.

²³ Connolly v. Goodwin, 5 Cal. 220; Hinckley v. O'Farrel, 4 Blackf. (Ind.) 185.

²⁴ See §§ 37-90, post.

²⁵ Weeping Water v. Reed, 21 Neb. 261, 31 N. W. 797.

²⁶ Smith v. Meador, 74 Ga. 416, 58 Am. Rep. 438; Dyer v. Flint, 21 Ill. 80, 74 Am. Dec. 73; Stout v. Slaterry, 12 Ill. 162; Rowley v. Berrian, 12 Ill. 198; Hinckley v. O'Farrel, 4 Blackf. (Ind.) 185; Tunis v. Withrow, 10 Iowa 305, 77 Am. Dec. 117; Welton v. Atkinson, 55 Neb. 674, 76 N. W. 473, 70 Am. St. Rep. 416; Beardsley v. Knight, 4 Vt. 471.

²⁷ Town of Knox v. Golding, 46 Ind. App. 634, 91 N. E. 857, 92 N. E. 986.

seal operates to render the certificate evidence of the acts recited, in a foreign country,²⁸ and indicates the notary's official character,²⁹ providing he states in his certificate that he has authority to act.³⁰ An official seal imparts verity and is universally recognized as evidence of authenticity when accompanied by the notary's statement in his certificate that he has authority.³¹

The impression of the seal on the paper in such manner as to be identified is sufficient.³² The United States statutes provide that it shall be lawful to affix the proper seal by making an impression therewith directly on the paper to which such seal is necessary, which shall be as valid as if made on wax or other adhesive substance.³³

The use of another notary's similar seal instead of the notary's own does not invalidate the instrument acknowledged, but is a breach of duty.³⁴

On removal from office, the notary's seal must usually be deposited with some officer as designated by statute.³⁵

§ 26. Necessity of Seal.—At the common law, a notary public was simply a commercial officer, and his official acts were known only by his official seal,³⁶ and throughout the United States, as a general rule, the official acts of a notary must be authenticated by his seal as well as his signature.³⁷ A certificate which lacks such authentication is without force and ef-

²⁸ *London & River Plate Bank v. Carr*, 54 N. Y. Misc. 94, 105 N. Y. Supp. 679.

²⁹ *Hertig v. People*, 159 Ill. 240, 42 N. E. 879, 50 Am. St. Rep. 162; *Kruse v. Wilson*, 79 Ill. 233; *Chiniquy v. Catholic Bishop of Chicago*, 41 Ill. 148; *Moore v. Titman*, 33 Ill. 358; *Gaynor v. Hibernian Sav. Bank*, 68 Ill. App. 485; *Warvelle's Abstracts* (2nd Ed.), p. 207.

³⁰ *Smith v. Lyons*, 80 Ill. 600; *Wellington v. Wellington*, 137 Ill. App. 394.

³¹ *Moore v. Titman*, 33 Ill. 358.

³² *Pierce v. Indseth*, 106 U. S. 546, 27 L. Ed. 254, 1 Sup. Ct. 418.

³³ U. S. Rev. St. 1878, § 6.

³⁴ *Muncie Nat. Bank v. Brown*, 112 Ind. 474, 14 N. E. 358.

³⁵ See §§ 37-90, post.

³⁶ *Dawsey v. Kerven*, 203 Ala. 446, 83 So. 338, 7 A. L. R. 1658.

³⁷ *Clark v. Wilson*, 127 Ill. 449, 19 N. E. 860, 11 Am. St. Rep. 143; *Booth v. Cook*, 20 Ill. 129; *Miller v. State*, 122 Ind. 355, 24 N. E. 156; *Stephens v. Williams*, 46 Iowa 540; *Gage v. Dubuque & P. R. Co.*, 11 Iowa 310, 77 Am. Dec. 145; *Tunis v. Withrow*, 10 Iowa 305, 77 Am. Dec. 117; *Gharst v. St. Louis Transit Co.*, 115 Mo. App. 403, 91 S. W. 453; *Welton v. Atkinson*, 55 Neb. 674, 76 N. W. 473, 70 Am. St. Rep. 416.

fect.³⁸ The notary must authenticate with his official seal, and not with a scrawl.³⁹ There are exceptions to the general rule, and the seal has been held unnecessary except in cases required by statute or the common law,⁴⁰ and in some cases the seal is unnecessary by express statutory provision. It may also be necessary for the notary to state that he has authority to act, to verify the seal.⁴¹

In some states, and under some statutes, the seal is not necessary to authenticate a certificate of acknowledgment,⁴² but under the rules of other cases, the seal is required, especially where the acknowledgment is to be used in another county.⁴³ A notary's certificate of acknowledgment has been held incomplete without it.⁴⁴

Under some statutes, notaries are not required to authenticate jurats to be used within their county, with their official seals,⁴⁵ and in a number of cases affidavits have been held sufficient though there was no seal,⁴⁶ as where the official character of the notary otherwise appeared.⁴⁷ Usually, however, the

³⁸ *Welton v. Atkinson*, 55 Neb. 674, 76 N. W. 473, 70 Am. St. Rep. 416.

Proof of the official character of a notary public using a notarial seal is not required. *Harding v. Curtis*, 45 Ill. 252; *Stephens v. Williams*, 46 Iowa 540.

³⁹ *Moore v. Titman*, 33 Ill. 358; *Booth v. Cook*, 20 Ill. 129; *Dumont v. McCracken*, 6 Blackf. (Ind.) 355; *Hinckley v. O'Farrel*, 4 Blackf. (Ind.) 185; *Rindskoff, Bro. & Co. v. Malone*, 9 Iowa 540, 74 Am. Dec. 367.

⁴⁰ *Schaefer v. Kienzel*, 123 Ill. 430, 15 N. E. 164; *Mineral Point R. Co. v. Keep*, 22 Ill. 9, 74 Am. Dec. 124.

⁴¹ *Smith v. Lyons*, 80 Ill. 600.

⁴² *Dawsey v. Kirven*, 203 Ala. 446, 83 So. 338, 7 A. L. R. 1658.

⁴³ *Rowley v. Berrian*, 12 Ill. 198.

⁴⁴ *Rowley v. Berrian*, 12 Ill. 198;

Mason v. Brock, 12 Ill. 273, 52 Am. Dec. 490; *Thompson v. Scheid*, 39 Minn. 102, 38 N. W. 801, 12 Am. St. Rep. 619.

⁴⁵ *Thielmann v. Burg*, 73 Ill. 293; *Dyer v. Flint*, 21 Ill. 80, 74 Am. Dec. 73; *Stout v. Slattery*, 12 Ill. 162; *Rowley v. Berrian*, 12 Ill. 198; *People v. Schleig*, 185 Ill. App. 480.

In attachment cases the affidavit may be made before any officer authorized by the laws of this state to administer oaths. If in the county, seal is not required, but is if outside the county or state. *Rowley v. Berrian*, 12 Ill. 198.

⁴⁶ *Clement v. Bullens*, 159 Mass. 193, 34 N. E. 173; *Earle v. National Metallurgic Co.*, 77 N. J. Eq. 17, 76 Atl. 555.

⁴⁷ *Earle v. National Metallurgic Co.*, 77 N. J. Eq. 17, 76 Atl. 555.

statutes require the official seal to be affixed, and an affidavit is not properly verified otherwise.⁴⁸

The omission of the seal when a deposition is taken has been held not fatal to the validity of the act, but in the case involved a statute existed whereby the deposition was effectual without a seal.⁴⁹

Some states require the seal to be attached to certificates of protest,⁵⁰ while in others it is not required, the certificate being sufficient evidence of the fact.⁵¹ The general rule is that the seal is necessary, and, in the absence of such seal, extraneous evidence of the officer's authority to protest must be given.⁵²

§ 27. Additional Authentication; Proof of Official Character.—Usually, the certificate of a foreign notary must be authenticated by some other official, showing his appointment and authority to act,⁵³ although it has been held that proof of the official character of a notary public using a notarial seal is not required.⁵⁴ Statutes have been enacted in many states governing this matter. Thus, some states require the notaries of other states and countries to have their official character certified to by the clerk of the county court under the court seal or by the secretary of the state under the great seal of the state. The seal authenticates the notary's signature. The clerk of the county court may certify to his appointment but not to his signature.⁵⁵ The necessity of additional authentication or proof of a notary's authority may be said to exist principally when the power involved, and which is exercised, did not exist at the common law, where such power has been conferred by stat-

⁴⁸ *Town of Knox v. Golding*, 46 Ind. App. 634, 91 N. E. 857, 92 N. E. 986; *Hill v. Alliance Bldg. Co.*, 6 S. D. 160, 60 N. W. 752, 55 Am. St. Rep. 819.

⁴⁹ *Carpenter v. Gibson*, 82 Vt. 336, 73 Atl. 1030. See also *Bohn v. Zeigler*, 44 W. Va. 402, 29 S. E. 983.

⁵⁰ *Kirksey v. Bates*, 7 Port. (Ala.) 529.

⁵¹ *Bank of Kentucky v. Pursley*, 3 T. B. Mon. (Ky.) 238.

⁵² *London & River Plate Bank*

v. Carr, 54 N. Y. Misc. 94, 105 N. Y. Supp. 679.

⁵³ *Hill Clutch Co. v. Independent Steel Co. of America*, 74 W. Va. 353, 82 S. E. 223; *Bohn v. Zeigler*, 44 W. Va. 402, 29 S. E. 983.

⁵⁴ *Harding v. Curtis*, 45 Ill. 252; *Singleary v. Watson*, 136 Ga. 241, 71 S. E. 162.

⁵⁵ *Stephens v. Williams*, 46 Iowa 540; *Browne v. Philadelphia Bank*, 6 Serg. & R. (Pa.) 484, 9 Am. Dec. 463.

ute. Accordingly, proof of authority to act is required when an oath is administered, this being a power which did not exist at the common law.⁵⁶ But where a statute provides that a recital of the official character of the officer shall be sufficient proof that he is a notary, such recital is not necessary to the validity of the affidavit. The statute merely refers to a method of proof.⁵⁷

§ 28. Effect of Notary's Certificate; Impeachment of Certificate.—Generally, a notarial certificate of protest is competent evidence without further proof,⁵⁸ and, in many states, statutory provisions expressly declare the certificates of notaries to be *prima facie* evidence of their acts.⁵⁹

By the universal consent of nations, credence is given to the attestation of a notary.⁶⁰ "Their acts duly authenticated are valid everywhere and prove themselves by the comity of nations."⁶¹

Although a written instrument may be impeached for fraud or misrepresentation, even though it is acknowledged,⁶² clear, convincing and satisfactory proof of the falsity or fraud is required,⁶³ and some cases also require proof of collusion of the grantees with the notary.⁶⁴ Usually, a notary cannot be offered in evidence to impeach his own certificate of acknowledgment,⁶⁵

⁵⁶ *People v. Nelson*, 150 Ill. App. 595; *Holbrook v. Libby*, 113 Me. 389, 94 Atl. 482, L. E. A. 1916A 1167; *Leavitt v. Williams*, 150 N. Y. Supp. 667.

See post, § 93.

⁵⁷ *Dilts v. Board of Excise Com'rs of Jersey City*, 80 N. J. L. 475, 79 Atl. 315.

⁵⁸ *Johnson v. Brown*, 154 Mass. 105, 27 N. E. 994.

⁵⁹ *Trevor v. Colgate*, 181 Ill. 129, 54 N. E. 909.

See §§ 37-90, post.

⁶⁰ *Kirksey v. Bates*, 7 Port. (Ala.) 529; *Spegail v. Perkins*, 2 Root (Conn.) 274.

⁶¹ *Sonfield v. Thompson*, 42 Ark. 46, 48 Am. Rep. 49.

As a public officer his office af-

fects the people generally, and does not concern alone a particular district or private individuals. This is shown from the antiquity of the office, nature of their duties, and the fact that their acts have always been respected by the custom of merchants and the courts of all countries. *Keeney v. Leas*, 14 Iowa 464.

⁶² *Mahan v. Schroeder*, 142 Ill. App. 538; *Tannenbaum v. Schaffer*, 122 N. Y. Supp. 180.

⁶³ *Sheridan County v. McKinney*, 79 Neb. 223, 115 N. W. 548.

⁶⁴ *Evart v. Dalrymple* (Tex. Civ. App.), 131 S. W. 223.

⁶⁵ *Shapleigh v. Hull*, 21 Colo. 419, 41 Pac. 1108; *Nicholson v. Snyder*, 97 Md. 415, 55 Atl. 484.

although some cases hold him to be a mere ministerial officer, so that his evidence may impeach his certificate.⁶⁶ The notary is not an agent so as to be disqualified from being a witness, when one of the parties is deceased, as where a statute excludes the testimony of agents of deceased persons,⁶⁷ and communications made to a notary when an acknowledgment is taken cannot be held privileged.⁶⁸ Privileged communications are those communications which are excluded in the trial of cases because of public policy, such as statements made by a client to his attorney. A certificate may be proved false by other evidence,⁶⁹ but the unsupported testimony of a party to a deed that he did not execute it cannot prevail over the official certificate of the officer taking the acknowledgment.⁷⁰

In Louisiana a notary's statement that a will was written by him, as dictated by the testator, in the presence and hearing of the witnesses, whose names are mentioned, and then read by him to the testator in the presence and hearing of said witnesses, at one and the same time, without interruption or turning aside, meets all the code requirements.⁷¹

§ 29. Presumptions as to Acts of Notaries.—Like other public officers, there is a presumption in favor of the validity of acts of notaries, and usually such acts can only be impeached for fraud. Every act is *prima facie* accepted as true, and is, as a result, of the most solemn character. The errors or mistakes of notaries will not be visited upon the parties who act before him. Thus, if a notary certifies to the protest of negotiable paper for nonpayment, every intendment is presumed in favor of the fair performance of his duty by the notary.⁷² If a certificate is made by a foreign notary who appears to be a woman, the court will assume that she was rightfully appointed, and that she acted rightfully, unless the contrary is made to

⁶⁶ *Effenberger v. Durant*, 57 Okla. 445, 156 Pac. 212. See also *Craig v. Shallock*, 10 Serg. & R. (Pa.) 377.

⁶⁷ *Borchers v. Barkers*, 158 Mo. App. 267, 138 S. W. 555.

⁶⁸ *People v. Driggs*, 14 Cal. App. 507, 112 Pac. 577.

⁶⁹ *Nicholson v. Snyder*, 97 Md. 415, 55 Atl. 484.

⁷⁰ *Kerr v. Russell*, 69 Ill. 666, 18 Am. Rep. 634.

⁷¹ *Monroe v. Liebman*, 47 La. Ann. 155, 16 So. 734.

⁷² *Kupferberg v. Horowitz*, 52 N. Y. Misc. 488, 102 N. Y. Supp. 502.

appear.⁷³ An officer taking a deposition is presumed entitled to the character that he assumes, and is presumed to act with authority.⁷⁴ Notaries are presumed to act within their jurisdiction,⁷⁵ and where the records of a deed fail to show a notation of the affixing of the seal to a document, such seal will be presumed attached to the original instrument.⁷⁶

§ 30. Judicial Notice.—Judicial notice is the cognizance taken by a court of matters of fact, without the production of evidence thereof. The matters of fact of which judicial notice will be taken are, in general, those of general notoriety, immemorial usage, or uniform national occurrence.⁷⁷ Courts take judicial notice of the officers of their county, and proof of the official character of these officers is not required.⁷⁸ Notaries being officers recognized by the commercial law of the world, the courts will take judicial notice of their seals,⁷⁹ of their appointment and continuance in office, and to inform itself will refer to the official records of such facts.⁸⁰

§ 31. Liabilities.

§ 32. —In General.—“A notary, when he assumes the duties of his office, is required to know the law in relation to his busi-

⁷³ *Nicholson v. Eureka Lumber Co.*, 160 N. C. 33, 75 S. E. 730, Ann. Cas. 1914C 202.

⁷⁴ *Carpenter v. Gibson*, 82 Vt. 336, 73 Atl. 1030.

⁷⁵ *Westover v. Bridgford*, 25 Cal. App. 548, 144 Pac. 313; *Barber v. De Ford*, 169 Iowa 692, 150 N. W. 86; *Hansford v. Snyder*, 63 W. Va. 198, 59 S. E. 975; *Reynolds v. Morton*, 22 Wyo. 174, 136 Pac. 795.

⁷⁶ *Rule v. Richards*, — Tex. Civ. App. —, 149 S. W. 1073.

⁷⁷ *Cyc. Law Dict.*

⁷⁸ *Hertig v. People*, 159 Ill. 237, 42 N. E. 879, 50 Am. St. Rep. 162; *Schaefer v. Kienzel*, 123 Ill. 430, 15 N. E. 164; *Thielmann v. Burg*, 73 Ill. 293; *Graham v. Anderson*, 42 Ill. 514, 92 Am. Dec. 89; *Dyer v. Flint*, 21 Ill. 80, 74 Am. Dec. 73; *Irving v. Brownell*, 11 Ill. 402.

⁷⁹ *Pardee v. Schanzlin*, 3 Cal. App. 597, 86 Pac. 812; *Hertig v. People*, 159 Ill. 240, 42 N. E. 879, 50 Am. St. Rep. 162; *McDonald v. People*, 123 Ill. App. 346; *Stoddard v. Sloan*, 65 Iowa 680, 22 N. W. 924; *State v. Zehnder*, 182 Mo. App. 161, 168 S. W. 661; *Brown Mfg. Co. v. Gilpin*, 120 Mo. App. 130, 96 S. W. 669; *T. W. Barhydt & Co. v. G. N. Alexander & Co.*, 59 Mo. App. 188; *Butts v. Purdy*, 63 Ore. 150, 125 Pac. 313, 127 Pac. 25; *Wiley v. Carson*, 15 S. D. 298, 89 N. W. 475; *Sloane v. Anderson*, 57 Wis. 123, 13 N. W. 684, 15 N. W. 21; *Pierce v. Indseth*, 106 U. S. 546, 27 L. Ed. 254, 1 Sup. Ct. 418.

⁸⁰ *Butts v. Purdy*, 63 Ore. 150, 125 Pac. 313, 127 Pac. 25. See also *City of Birmingham v. Edwards*, 201 Ala. 251, 77 So. 841.

ness.”⁸¹ This does not mean that he is a lawyer, and he is not presumed to be a lawyer. If, for instance, a notary is ordered to demand and protest a bill on a wrong day, there is no right of action for loss ensuing, as the notary is not expected to reverse or revise the decisions of his employer.⁸² Similarly if there is a disputed question as to the manner of performance of his duties, which involves the judicial construction of a statute. In such case the notary cannot be held liable for error resulting in loss.⁸³ And in the case of an instrument drawn by a notary who is not a lawyer, it has been held that “little weight is to be attached to any formal words employed.”⁸⁴ But a notary holds himself out to the world as competent to perform the business connected with his office, and to perform his duties with integrity.⁸⁵ The performance of such duties involves more than mere honesty; it involves care, diligence, attention and reasonable competency. Great faith and credit is reposed in the certificates of notaries, and a corresponding duty is imposed on them to exercise care and caution, such as a reasonably prudent man, burdened with such responsibility, would exercise.⁸⁶ Most of the cases of improper acts of notaries, or misconduct, involve the administration of oaths, the taking of acknowledgments, or neglect in protesting or performing duties with respect to commercial paper, matters which require separate treatment in detail.⁸⁷

The notary's negligence or misconduct is a serious matter subjecting both him and his bondsmen to liability,⁸⁸ and giving cause for removal from office.⁸⁹ In addition, the failure to properly perform his duties may result in a notary not being entitled to his fees,⁹⁰ or subjecting him to criminal liability. Also the failure to properly perform his duties may render his acts of no avail. An acknowledgment taken before a notary whose commission has expired has been held insuffi-

⁸¹ Neal & Co. v. Taylor, 9 Bush (Ky.) 380.

⁸² Commercial Bank of Kentucky v. Varnum, 49 N. Y. 269.

⁸³ Neal & Co. v. Taylor, 9 Bush (Ky.) 380.

⁸⁴ Northrup v. Scott, 85 N. Y. Misc. 515, 148 N. Y. Supp. 846.

⁸⁵ Fogarty v. Finlay, 10 Cal. 239, 70 Am. Dec. 714.

⁸⁶ State v. Webber, 177 Mo. App. 60, 164 S. W. 184.

⁸⁷ See ch. VI, post.

⁸⁸ See § 33, post.

⁸⁹ See § 14, ante.

⁹⁰ See § 36, post.

cient.⁹¹ So extensive are the results in this respect that it is difficult to name them or to name all of them. Generally the derelictions of duty are mistakes, casual happenings, or mere careless occurrences. But the results are extensive, either resulting in penalty to the notary, or serious consequences to those who rely upon his acts. And usually the notary is the one who must suffer. Where a bill of sale by a mortgagor of property was written, witnessed and acknowledged by a notary public, who subsequently claimed the property involved under a chattel mortgage, it was held that the notary was estopped from claiming the property under the rule frequently applied by the courts that where one of two innocent persons must suffer by the act of a third, he whose negligence caused the loss must be the sufferer.⁹² The case properly does not detail a liability, but illustrates the penalties of improper performance of duty, or neglect.

A judgment against a notary for negligence has been sustained as a community judgment. It has been held that a community may engage in the business of notary public, and can obtain authority for one of its members so to act.⁹³ The case is called attention to as further emphasizing the extent of a notary's liability. In states where the community property system obtains, the combined earnings of husband and wife may be subjected to execution, because of a chance dereliction of duty. In fact, in the case referred to, the notary attempted to show that he was ordinarily careful and prudent, but by the application of well-known rules of evidence, this proof was rejected by the court. The specific act of negligence relied upon was established.

Notaries have been held to be public officers within the meaning of a constitutional provision forbidding them from accepting free passes, free transportation, franking privileges, etc., from any person or corporation, or from making use of the same while holding office.⁹⁴

⁹¹ *Lambert v. Murray*, 52 Colo. 156, 120 Pac. 415.

⁹² *Stoffels v. Brown*, 37 N. D. 272, 163 N. W. 834.

⁹³ *Kangley v. Rogers*, 85 Wash. 250, 147 Pac. 898.

⁹⁴ *People v. Wadhams*, 176 N. Y. 9, 68 N. E. 65, 18 Chicago Law Jour. 600; *People v. Rathbone*, 145 N. Y. 434, 40 N. E. 395, 28 L. E. A. 384.

§ 33. —**Liabilities on Official Bonds.**—Bonds of notaries public may be in favor of some public official, such as the governor, but such official is only nominally a party to the bond, the real beneficiaries or obligees being the persons who suffer loss from the official misdoings of the notary.⁹⁵ Usually any party injured by official misconduct or neglect has a right of action by reason thereof.⁹⁶ An assignee of a mortgage may recover damages when the mortgage contains a false certificate of acknowledgment.⁹⁷ Notaries and their bondsmen may be liable for the failure of a notary to perform a duty incumbent on him, or required by law,⁹⁸ for negligence in the performance of the notary's duty,⁹⁹ for the failure to give notice of dishonor of protested commercial paper,¹ for negligence in giving an insufficient notice of protest,² for the making of a false certificate of acknowledgment,³ and the failure of a notary to state in a certificate of acknowledgment that the party was known, or identified by witnesses, as required by statute, has been char-

⁹⁵ *Globe Indemnity Co. v. O'Connor*, 147 La. 195, 84 So. 585.

⁹⁶ *State v. American Surety Co. of New York*, 203 Mo. App. 71, 217 S. W. 317.

⁹⁷ *Wilson v. Gribben*, 152 Iowa 379, 132 N. W. 849.

⁹⁸ *Schmitt v. Drouet*, 42 La. Ann. 1064, 8 So. 396, 21 Am. St. Rep. 408.

⁹⁹ *Stork v. American Surety Co.*, 109 La. 713, 33 So. 742.

¹ *Tevis v. Randall*, 6 Cal. 632, 65 Am. Dec. 547; *Neal & Co. v. Taylor*, 9 Bush (Ky.) 380; *Williams v. Parks*, 63 Neb. 747, 89 N. W. 395, 56 L. R. A. 759; *Wheeler v. State*, 9 Heisk. (Tenn.) 393.

² *Bowling v. Arthur*, 34 Miss. 41.

³ *Heidt v. Minor*, 113 Cal. 385, 45 Pac. 700; *Kleinpeter v. Castro*, 11 Cal. App. 83, 103 Pac. 1090; *Doran v. Butler*, 74 Mich. 643, (People v. Butler), 42 N. W. 273; *State v. Plass*, 58 Mo. App. 148;

Lesser v. Wunder, 9 Wkly. Dig. (N. Y.) 56.

Most of the states positively forbid the attestation or acknowledgment of an instrument by the officer unless he positively knows, or has satisfactory evidence on the oath or affirmation of credible witnesses, that the person making the acknowledgment is the individual described in and who executed the instrument. A disregard of these requirements renders the officer or his sureties liable for any resulting loss or damage, unless the losing party is the proximate cause. *Joost v. Craig*, 131 Cal. 504, 63 Pac. 840, 82 Am. St. Rep. 374; *Hatton v. Holmes*, 97 Cal. 208, 31 Pac. 1131; *Overacre v. Blake*, 82 Cal. 77, 22 Pac. 979; *Oakland Bank of Savings v. Murfey*, 68 Cal. 455, 9 Pac. 843; *Bank of California v. Western U. Tel. Co.*, 52 Cal. 280; *Taylor v. Western Pac. R. Co.*, 45 Cal. 323.

acterized as "gross negligence."⁴ This matter of misconduct and negligence in the taking of acknowledgments is so extensive as to require special treatment in detail, and is only referred to at this time as an instance of when bondsmen may be liable.⁵

The bond of a notary is purely one of indemnity, and in case of recovery, the amount is limited to the actual loss sustained from the act of the notary.⁶ A notary's bond, furnished in compliance with a special law requiring it, is a legal bond, which the law forms part of. It is a contract to be strictly construed, the object being to make certain the faithful performance and discharge of all the duties of the office, and in case of his failure to do so, or any loss sustained, the sureties to be held liable. The bond is so conditioned for the protection of all persons employing him professionally. Before he and his sureties can be held, it is necessary to determine whether the act done or not done, committed or omitted, was or was not authorized by law and whether injury has been sustained. The liability of the sureties is only on his failure to discharge the duties of his office well and faithfully.⁷ The damages recoverable are such as naturally and proximately result from the breach of duty.⁸ Where a notary procured money from a purchaser of property by representing that his client needed it, and promised delivery of a deed the following day, and then misappropriated the money, the fact that the notary had prepared a forged deed did not render the bondsmen liable. The forged deed and the false acknowledgment appended

⁴ *Fogarty v. Finlay*, 10 Cal. 239, 70 Am. Dec. 714; *Peterson v. Mahon*, 27 N. D. 92, 145 N. W. 596. See also *Joost v. Craig*, 131 Cal. 504, 63 Pac. 840, 82 Am. St. Rep. 374; *State v. Ryland*, 163 Mo. 280, 63 S. W. 819.

⁵ See ch. III, post.

⁶ *State v. American Surety Co. of New York*, 203 Mo. App. 71, 217 S. W. 317; *State v. Packard*, 199 Mo. App. 53, 201 S. W. 953.

⁷ *Weintz v. Kramer*, 44 La. Ann. 35, 10 So. 416; *Schmitt v. Drouet*,

42 La. Ann. 1064, 8 So. 396, 21 Am. St. Rep. 408; *Monrose v. Brocard*, 20 La. Ann. 78; *Lescouzeve v. Ducatel*, 18 La. Ann. 470.

⁸ *State v. Packard*, 199 Mo. App. 53, 201 S. W. 953; *State Nat. Bank v. Mee*, 39 Okla. 775, 136 Pac. 758.

Under Rev. Code, § 326, sureties are liable for injury which results proximately from the official misconduct or neglect of a notary. *Ellis v. Hale*, — Mont. —, 194 Pac. 155.

thereto were not the proximate cause of the loss.⁹ No damages can be recovered from a notary or his bondsmen for official misconduct or neglect when no damage has been sustained.¹⁰

§ 34. —Penal Liabilities.—Statutory provisions exist in a large number of states imposing penalties for various violations of duty by notaries. As instances are the making of false certificates of acknowledgment, acting without being qualified, acting after their term of office has expired, withholding records, charging excessive fees, failing to add the date of expiration of their commissions, and in general for neglect, misconduct, malfeasance or misfeasance.¹¹ In addition, notaries may be involved in more serious offenses, such as forgery and other crimes. And it may be noted that the offense of appending false certificates to affidavits, which resulted in the conviction of one notary, was also held an offense involving moral turpitude, for which the same notary might be disbarred as an attorney at law.¹² In a criminal prosecution for wilfully certifying falsely that a mortgage was duly acknowledged, the state has been held required to prove not only the falsity of the acknowledgment, but that the officer knew that the certificate was false. Such knowledge was provable by evidence of similar acts.¹³

§ 35. Taxation of Notaries.—In some states an annual license fee is exacted from notaries.¹⁴ but usually they are not subject to taxation. Authority to tax "trades, occupations and professions" has been held not to authorize a tax on notaries public.¹⁵

§ 36. Compensation and Fees of Notaries.—Notaries are entitled to the fees fixed by statute in every case, and should not hesitate to ask for the same. Similar services performed by other officers always result in the imposition of a reasonable

⁹ *People v. Nederlander*, 177 Mich. 434, 143 N. W. 753, Ann. Cas. 1915C 1026.

¹⁰ *McAllister v. Clement*, 75 Cal. 182, 16 Pac. 775.

¹¹ See §§ 37-90, post. See also § 24, ante.

¹² *In re Hopkins*, 54 Wash. 569,

103 Pac. 805.

¹³ *People v. Marrin*, 205 N. Y. 275, 98 N. E. 474, 43 L. R. A. (N. S.) 754.

¹⁴ See §§ 37-90, post.

¹⁵ *Cooley on Taxation*, supported by *City of New Orleans v. Bienvenu*, 23 La. Ann. 710.

amount, which is expected to be paid, and a notary who hesitates to charge lowers the dignity of his office. Elsewhere in this work, the importance of the notary's duties, and the necessity of care in the performance of his acts, has been referred to in detail, and as a result such care and prudence should be rewarded with the proper statutory fees. But, on the other hand, notaries should never be so anxious for their fees as to overlook this care and prudence, or to ignore the law. Negligence may result in expensive damage suits, or extensive liabilities. The small fee received may cost thousands of dollars, if negligence is involved, or misconduct.

Where the statutes expressly require a notary to keep an official register of his acts, a notary who fails to perform such duty cannot recover compensation for his acts.¹⁶

Usually cities have no authority to employ notaries, although their services may be convenient to the transaction of certain business,¹⁷ and city officials cannot recover extra compensation from the city for notarial services performed for other parties.¹⁸ Similarly, persons holding subordinate positions in city departments, for which they receive a stipulated salary, cannot recover compensation from the city for notarial services rendered as an incident of their duties, it being understood that such services were to be rendered as part of the clerical duties.¹⁹ But if the services are not part of the regular duties, and are extra, and there is no waiver of the right to collect, such officials may recover for their work, rendered for the benefit of the city.²⁰ If a clerk performs duties as a notary, even though it is during his working hours, he is entitled to the statutory fees. The city is not entitled to such compensation, and an ordinance enacted by a city requiring the fees to be paid into the city treasury has been held void and in conflict with a statute fixing the fees of notaries.²¹

Notaries are frequently employed in banks, and in one case

¹⁶ *Black v. City of Pittsburgh*, 266 Pa. 97, 109 Atl. 616.

¹⁷ *Black v. City of Pittsburgh*, 266 Pa. 97, 109 Atl. 616.

¹⁸ *Sheahan v. City of Chicago*, 127 Ill. App. 626.

¹⁹ *McCabe v. City of New York*, 77 N. Y. App. Div. 637, 79 N. Y.

Supp. 176; *Benjamin v. City of New York*, 77 N. Y. App. Div. 62, 78 N. Y. Supp. 1067.

²⁰ *Morgan v. City of New York*, 190 N. Y. 237, 82 N. E. 1089.

²¹ *Wood v. City of Kansas City*, 162 Mo. 303, 62 S. W. 433.

where such employment existed, the notary agreed to accept in full payment for his services, one-half of the legal fees chargeable therefor. Subsequently, the notary sued for the fees retained by the bank, and it was held by the court that the contract entered into was contrary to public policy and void and that the notary was intended to act independently of any influence of the bank or agent placing paper in his hands for official action.²² An almost identical case arose in another state, where the notary had agreed as part of his contract of employment that protest fees should be retained by the bank, but, in this latter case, the notary had accepted a salary for five years without claiming his fees, and had repeatedly signed a pay roll whereby he released all claims. The court held that he had assigned his fees and could not recover. The contention was also made that the assignment was contrary to public policy, but the court held that, if this was so, the parties were *in pari delicto*, that is, that they were equally in fault, and, as a consequence, the employee could not recover.²³ The first case states the general rule, which is that the fees belong to the notary, and that agreements to assign them in this manner are void.

The amount of a notary's fees is fixed by statute in practically all states, being a specified sum for each act.²⁴ When a statute exists fixing the fees of notaries, the charge of a round sum for taking an inventory in a succession is illegal.²⁵ Also when the statutes governing the taking of depositions provide that the notary may write out the testimony, employ a stenographer, or permit his employer to hire a stenographer, the notary may charge the full statutory rates for transcribing and taking in either of the first two cases, but in the third case he can only charge his fee for the certificate and the administration of the oath.²⁶

²² Ohio Nat. Bank of Washington v. Hopkins, 8 App. Cas. (D. C.) 146, supported by Palmer v. Vaughan, 3 Swanst. 173; Parsons v. Thompson, 1 H. Bl. 322; Meguire v. Corwine, 101 U. S. 108, 25 L. ed. 899.

²³ Mussing v. Corn Exchange Nat. Bank of Chicago, 173 Ill. App. 53.

²⁴ See §§ 37-90, post.

See Laclede Land & Improvement Co. v. Morten, 183 Mo. App. 637, 167 S. W. 658, construing statutes and holding the fee for a certificate, attested by seal, to be 50c.

²⁵ Succession of Morgan, 124 La. 755, 50 So. 703.

²⁶ Coleman v. Northern Pac. R. Co., 41 Mont. 123, 108 Pac. 582.

STATUTORY REQUIREMENTS.

§ 37. **Alabama**—**ELIGIBILITY**—citizenship. **WOMEN**—are eligible. **APPOINTMENT**—by the governor. **COMMISSION**—fee—none seems to be required. **BOND**—\$1,000, with sureties approved by the county probate judge. Bond to be filed and recorded with such judge. **OATH**—to be taken. **TERM**—four years. **SEAL** of office to be procured, with name of notary, office, state and county of appointment. **POWERS AND DUTIES**—to administer oaths, take affidavits, acknowledgments, or proofs, of instruments, demand acceptance of payment and protest commercial paper, and give notice of protest. Notaries *ex officio* justices of the peace, appointed in election districts of counties, and wards of cities, have powers of justice of the peace in addition to those of notaries. May issue attachments. **RECORD OR REGISTER**—to be kept of all official acts, and certificates given of same when required and paid for. On removal from office, all records and papers to be deposited with county probate judge within thirty days thereafter under penalty. Dockets and files of notary *ex officio* justice to be delivered to successor in office. **REMOVAL**—by death, expiration or otherwise. Removal from county vacates office. **LIABILITIES AND PENALTIES**—imposed as herein stated with respect to register, and also where notary *ex officio* justice fails to keep record of criminal cases, or report same to grand jury, or fails to report and pay over fines collected. **CERTIFICATE**—under notary's hand and seal is evidence of facts stated. **JUSTICES**—act when there are no notaries but they must so state. **FEE BILL**—acknowledgments, 50c; presentation for acceptance or payment, 50c; protesting, \$1.00; notice of protest, each, 50c; other protests, \$2.00; oaths, 50c; copies from register, per 100 words, 20c; certificate and seal, 25c; other certificates, 50c.

§ 38. **Alaska**—**ELIGIBILITY**—resident of the district. **APPOINTMENT**—by the governor for the district. **COMMISSION**—fee—\$10. **TERM**—four years. **COMMISSIONERS**—appointed by the court to act as notaries, and record kept of all acts. **BOND**—\$1,000. Approved by clerk of his district court. Same with oath and signature to be filed with the secretary of his district. **OATH**—to be taken. **DUTIES**—to demand acceptance and payment of foreign, domestic and inland bills of exchange, or promissory notes, protest same for nonacceptance or nonpayment, to exercise the other duties of such office accorded by the commercial laws of nations, etc. To take acknowledgment or proofs of deeds and other instruments in writing, attach his certificate to same. Take depositions, affidavits, administer oaths and affirmations, make and certify copies of records of his office. **LIABILITIES**—notary and sureties liable to parties injured for all damages sustained, for official misconduct or neglect. **SEAL**—to provide and keep an official seal with the words engraved thereon, "Notary Public," and his name and name of district for which he is appointed. **RECORD**—to be kept of all his acts. **REMOVAL**—by death or expiration of office, all his records to be filed

with the clerk of the district court. Failure to do so subjects him to damages to party injured.

§ 39. Arizona—ELIGIBILITY—resident of the county. **WOMEN**—over twenty-one years of age are eligible. **APPOINTMENT**—by the governor. **COMMISSION**—will issue from the secretary of state to the district court clerk, who will notify the applicant. Fee, \$2.50. **TERM**—four years. **BOND**—\$1,000, with sureties approved by the chairman of the board of supervisors. File with county recorder. **OATH**—to be taken before an officer authorized to administer oaths within twenty days after appointment, same to be recorded with district clerk. **DUTIES**—to take acknowledgments or proofs of instruments in writing, affidavits, depositions, oaths and affirmations, demand acceptances or payment, protest commercial paper. **SEAL**—to be procured containing "Notary Public," his name and county. Authenticate all acts with same. State expiration of office. Acts received as evidence throughout the state. **RECORD**—to be kept of all official acts, of parties, date and character of instrument acknowledged or proved, date of acknowledgment, and description of property affected, if any. Certified copies of record to be given when requested. Protest and certificate prima facie evidence of facts therein. **REMOVAL**—by death or otherwise, deposit all records and papers with county recorder within three months, under penalty of from \$50 to \$500. Destruction or defacing records subjects to heavy fine. **JURISDICTION**—in the county of appointment. Oaths and affidavits required to be taken in other states, may be taken before any judge or commissioner of a court of record, master in chancery or notary public authorized, under their official seals. **FEES**—protesting a bill or note for nonacceptance or nonpayment, registering and seal, \$2.00; each notice of protest, 50c; protest in other cases for each 100 words, 20c; certificate and seal to such protest, 75c; taking acknowledgments, etc., 75c; taking acknowledgments of married women, 75c; administering oath or affirmation, 75c; certificates under seal not provided for, 75c; copies of records, certificate and seal, less than 200 words, 75c; if more than 200 words, per additional 100, 20c; all other notarial acts, 50c; deposition of witness per 100 words, 20c; swearing witness to deposition and other business therewith, 75c; acknowledgment to bill of sale of horses, mules, asses, or neat cattle, with certificate and seal, 25c.

§ 40. Arkansas—ELIGIBILITY—citizen of the county for which appointed. **WOMEN**—are eligible. **APPOINTMENT**—by the governor. **TERM**—four years. **COMMISSION**—fee—\$5.00. **BOND**—\$1,000, with securities approved by clerk of circuit court. **OATH**—required. **POWERS AND DUTIES**—to take acknowledgments or proofs of written instruments, depositions, in and out of the state, affidavits, administer oaths and affirmations, make declarations and protests. Powers are co-extensive with state for purpose of swearing witnesses, taking affidavits and depositions and acknowledgments. **SEAL**—he must provide a seal of his office, to represent by its impression the emblems and devices presented by the great seal of state, surrounded by the words "Notary

Public, County of ———, Ark.” All official acts to be authenticated therewith. Must state when his commission expires, on all acknowledgments or jurats. Penalty for omission is \$5.00. RECORD—shall keep a record of all his official acts in a book for that purpose and give a certified copy of any record to any person applying therefor on payment of the fee. REMOVAL—all papers and records to be delivered to the county clerk. Acts received as evidence of the facts stated. FEES—for noting for protest, 50c; entering protest, 75c; registering protest, 40c; notice to indorsers, etc., each, 50c; taking acknowledgment, 50c; each marine protest, \$2.00; protest to secure insurance, \$2.00; copy of record and papers in his office, each 100 words, 5c; each deposition, \$2.00; mileage to and from place to officer’s office, per mile, 5c; all fees not to exceed for the day, \$5.00; if more than one day, for each day, \$2.00; for issuing subpoena, 50c; for issuing order of arrest, 50c.

§ 41. California—ELIGIBILITY—must be a citizen of the United States and of this state, twenty-one years of age, resident of county for six months. WOMEN—having these qualifications can be appointed. APPOINTMENT—by the governor. Number of appointments limited. COMMISSION—fee—to state secretary, \$5.00. OATH—to be taken. TERM—four years. BOND—\$5,000, to be approved by the judge of the county superior court. Bond and oath to be filed with county clerk in twenty days, duplicates with clerk’s certificate of these facts to be sent to the secretary of state in thirty days by the notary. SEAL—to provide and keep an official seal, having engraved thereon the arms of the state, the words “Notary Public,” and the county for which commissioned. All acts to be authenticated therewith. DUTIES—to take acknowledgment or proofs of instruments in writing in his county. To take depositions, affidavits, administer oaths and affirmations incident to the office or to be used before any court, judge, officer, or board in this state. When requested, to demand acceptance and payment of bills of exchange, or promissory notes, to protest same for nonacceptance or nonpayment, to exercise such other powers and duties as by the law of nations and commercial usages, or by the laws of any other state, government, or country, may be performed by notaries. Protest of notary under hand and seal is prima facie evidence of facts contained therein. CRIMINAL LIABILITY—every public officer authorized by law to give any certificate or other writing, who makes and delivers such certificate or writing containing statements known to be false, is guilty of a misdemeanor. REMOVAL—by death, resignation or disqualification, all records must be delivered to the county clerk within thirty days. RECORD—all their official acts, parties, to date, and character of every instrument acknowledged or proved by them. To give certified copies of same when so requested and upon receipt of their fees. LIABILITIES—notary and his sureties liable for his misconduct or neglect to all parties injured, for damages. FEES—protest, \$2.00; notice of, \$1.00; recording same, \$1.00; drawing affidavit, deposition or other paper not herein mentioned, each folio, 30c; taking acknowledgments, etc., for the first two signatures, \$1.00 each; additional signatures, 50c each; administer—

ing oath or affirmation, 50c; every certificate, including writing and seal, \$1.00.

§ 42. **Colorado**—**ELIGIBILITY**—citizenship. **WOMEN**—not eligible. **APPOINTMENT**—by governor. **COMMISSION**—to be recorded with the county clerk before entering upon the duties of the office. Recorder or clerk and recorder of any county is authorized to issue certificates as to date, expiration of commission and qualifications of notary. **TERM**—four years. **BOND**—\$1,000, same to be approved by the county clerk. **OATH**—to be taken before entering upon the duties of the office. Bond, and oath indorsed thereon, to be recorded with the county register of deeds. **POWERS AND OFFICIAL DUTIES**—take proofs of acknowledgment of all instruments of writing relating to commerce and navigation, acknowledge deeds and powers of attorney, administer oaths, make declarations, protests, and all acts usually performed by notaries in other states and territories. Act only in the county of appointment. **SEAL**—to provide an official seal, consisting of an impression on paper or wax, setting forth the notary's name and residence. He shall designate in writing the date of expiration of his commission. All official acts to be attested therewith. **RECORD**—must keep record of all his official acts, and, when required, give certified copies of same upon receiving his usual fee. **REMOVAL**—within thirty days all papers and records to be deposited with county register of deeds. **LIABILITIES**—bond may be sued on by any person injured on account of unfaithful performance of notary's duties, but suit must be instituted within three years after accrual of cause of action. Failure to keep record is unlawful act and person aggrieved thereby may recover damages in nature of penalty on bond, not less than \$100 for each offense, notary forfeits commission and in addition is liable on bond for damages sustained. Notaries are also subject to national guard service and are not exempt as certain other officers. **FEES**—noting for protest, 50c; protesting and record, 75c; notices, each, 50c; certificate and seal, each, 50c; acknowledgments, one, 50c; additional, each, 25c; depositions, per 100 words, 15c; swearing, seal and certificate, 25c; other fees same as justices.

§ 43. **Connecticut**—**ELIGIBILITY**—citizenship. **WOMEN**—are eligible. **APPLICATION**—must be in handwriting of applicant, except those of attorneys or commissioner of superior court. **APPOINTMENT**—by governor. **COMMISSION**—fee—\$5.00 payable to executive secretary. **TERM**—five years from February 1st of year commission issues. **BOND**—not required. **OATH**—to be filed with county superior court clerk, together with commission. Clerk may certify to authority and official acts of notary. Oath and commission of notaries in New Haven county to be recorded at Waterbury. In New London county, record is made by clerk of court of common pleas. **SEAL**—not required. **RECORD**—not required. **REMOVAL**—by the governor. Secretary to give notice of revocation of commission within five days to clerk of superior court. **JURISDICTION**—any place in the state. **LIABILITIES**—no statutory liabilities. **FEES OF NOTARIES**—marine protest, \$2.00; en-

tering protest of bill or note, or noting without protest, administering an oath, taking acknowledgment under seal, 50c; noting a bill or note for protest, recording protest, each notice to indorsers, etc., 25c; travel, per mile, 10c; oath to a pensioner, 25c; fee of witness, per day, 50c; fee of witness for travel, per mile, 10c; depositions, in state, each, \$3.00; depositions, out of state, each, \$5.00; acknowledgments, 25c; affidavits, 10c; oaths, out of court, 10c; subpoena, 25c.

§ 44. Delaware—**ELIGIBILITY**—citizenship. Collector of state revenue to be appointed notary for his business. Financial institutions to have notaries for their business and to execute their papers. Justice of the peace to be appointed. Number of additional notaries in various counties limited. **APPOINTMENT**—by the governor. **COMMISSION**—fee—\$10, payable to secretary of state. **TERM**—two years, except justice of the peace, or collector of state revenue. **OATH**—prescribed by state constitution, to faithfully discharge duties of office, duly signed and certified, to be filed with county recorder. **DUTIES AND POWERS**—to acknowledge deeds or other instruments, administer oaths, etc., to take private examination of married women parties to a deed. May give certificate of descent of Nanticoke Indians. **SEAL**—to have a seal engraved with name of notary, title, date of appointment, term of office and anything else desired. **REMOVAL**—officer failing to provide required seal may be removed by governor for neglect. **LIABILITIES**—for unfaithfulness in duties. **FEES**—protest of note, etc., 80c; notice of protest, 20c; exemplification, 25c; protest of foreign bill, \$1.00; notice, 37c; exemplification, 75c; registering bill of exchange, etc., where no probate fee, 20c; registering common sea protest, 75c; registering foreign sea protest, \$1.00; registering protest for detaining vessel, \$4.00; exemplification of three last protests, \$1.00; registering obligation, letter of attorney, bill of sale, or other writing, \$1.00; acknowledgment of letter of attorney or other instrument, \$1.00; acknowledgment of deed, 50c; taking and certifying affidavit, 25c; administering and certifying oath, 50c; taking deposition, court to allow a reasonable fee; drawing affidavit or deposition, 2c a line; other certificates, 35c.

§ 45. District of Columbia—**ELIGIBILITY**—resident of the district. **APPOINTMENT**—by the president. **TERM**—five years. **BOND**—for \$2,000, with security approved by the supreme court or a justice thereof. **OATH**—to be taken. He shall deposit an impression of his seal and signature with the clerk of the supreme court of the district. **DUTIES**—to take depositions, acknowledgments, affidavits and oaths, etc., to demand acceptance and payment of bills of exchange, etc., and to protest the same. They may perform such other acts for use and effect beyond the jurisdiction of the district according to the law of any state, territory or foreign government. **SEAL**—to provide a notarial seal, with which he shall authenticate his official acts. **RECORD**—to keep a fair record of all his official acts, and, when required, to give a certified copy of any record in his office to any person upon payment of the fees therefor. **REMOVAL**—at discretion, by death, resignation or removal

from office, all records and official papers to be deposited with the clerk of the supreme court of the district. **LIABILITY**—any notary taking a higher fee than allowed shall be fined \$100 and be removed from office by the supreme court of the district. The original protest of a notary public, under his hand and official seal, of any bill of exchange or promissory note for nonacceptance or nonpayment, stating the presentment, service of notice, mode of notice, reputed residence of the party, and the nearest postoffice, same shall be prima facie evidence of facts stated. The certificate of a notary public, under his hand and seal of office, drawn from his record, stating the protest and the facts therein recorded, shall be evidence of the facts. Seal and official documents are exempt from execution. **NOTARY'S FEES**—certificate and seal, 50c; taking depositions, per 100 words, 10c; administering an oath, 15c; taking acknowledgments with certificate, 50c; protesting and recording, \$1.75; each notice of protest, 10c; each demand for acceptance or payment, if accepted or paid, \$1.00; to be paid by the party accepting or paying the same; each noting of protest, \$1.00.

§ 46. **Florida**—**ELIGIBILITY**—citizen of the United States. **WOMEN**—over twenty-one are eligible. **APPOINTMENT**—by the governor. **TERM**—four years. **BOND**—for \$500, filed like bonds of county officers. **OATH**—for faithful performance of duties. **DUTIES**—to take oaths, acknowledgments, protests, and solemnize marriages. State expiration of commission on all documents. **SEAL**—to procure an official seal for authenticating his acts. **RECORD**—to be kept of official acts. Need not report fees collected. **LIABILITY**—for unfaithfulness. Penalty for acting after commission expires. **FEES**—for protesting bills, notes, etc., \$2.00; noting marine protest, etc., \$2.00; administering oath, 10c; attendance at a demand, tender or deposit and noting, \$1.00; each order for survey, 50c; copying papers necessary, per 100 words, 20c; additional 100 words or fraction, 10c.

§ 47. **Georgia**—**ELIGIBILITY**—citizen of the United States, twenty-one years old, or an attorney, and of good moral character. **APPOINTMENT**—by the judges of the superior courts, in vacation or in term time. **TERM**—four years, revocable at any time by the judges. **COMMISSION**—the clerk issues it and keeps a register of their names. **FEE**—for same, \$2.00 in full. **BOND**—none required. **OATH**—to be taken before the clerk of the superior court, before entering upon their duties, which shall be entered on the minutes of the court, as follows: "I, do solemnly swear (or affirm), that I will well and truly perform the duties of a notary public for the County of —, to the best of my ability; and I further swear, or affirm, that I am not the holder of any public money belonging to the state, and unaccounted for. So help me God." **DUTIES AND POWERS**—to take acknowledgments relating to commerce and navigation, and to witness such deeds and papers as they are permitted by law. To demand acceptance and payment of commercial paper, or paper entitled to days of grace, to note and protest the same. To certify all official acts when required. To administer

oaths which are not required by law to be administered by a particular officer. To exercise all other powers incumbent upon them by commercial usage or the laws of this state. They cannot issue attachments or garnishments, or subscribe affidavits or approve bonds for the same. JURISDICTION—the county of their residence and appointment. SEAL—to be provided for authenticating his official acts, having the impression of his name officially, the name of the state and county of his appointment. No seal is required to his attestation of deeds. RECORD—to be kept of his official acts signed by him with dates. REMOVAL—from county vacates office. LIABILITIES—for excess of charges. FEES—Protesting and notice not to exceed \$1.50; administering an oath, 30c; attendance on any person to make proof as a notary and certifying same, \$1.00; every other certificate, 50c. The cost of registering is a charge and must be charged in the costs at the same time and paid by the party for whose benefit the noting and protesting was done. COMMERCIAL NOTARIES PUBLIC FOR STATE AT LARGE—ELIGIBILITY—citizenship. WOMEN—are eligible. APPOINTMENT—by the state librarian. TERM—four years, revocable at any time by librarian. COMMISSION—the librarian issues it and keeps a record. COMMISSION—fee—\$2.00. BOND—none required. OATH—to be taken. Form like that of county notaries. DUTIES AND POWERS—the same as county notaries. JURISDICTION—have power to act in any county. LIABILITIES—same as county notaries. OFFICIAL SIGNATURES—must indicate that they are notaries for state at large. FEES—same as county notaries. NOTARIES FOR MILITARY DISTRICTS—APPOINTMENT—by judges of the superior court in their respective circuits at the term of court next preceding the vacancy or at some succeeding term after such vacancy has occurred. Recommendation of to be by the grand juries of each county. COMMISSIONED—by the governor. TERM—four years. They are *ex officio* justices of the peace. Removable on conviction of malpractices in office. ACTS—bills of exchange, drafts and promissory notes, required by the laws of this state, may be proved by the certificate of such notary under his hand and seal; certificate must be filed in court at first term and remain until trial. JURISDICTION—extends over their districts, and of other districts in certain cases. They may sue or be sued before the other in the district; may preside in any district of their county when the other is disqualified. OATH—before entering on their office, to be taken and subscribed before the ordinary of the county, viz.: “I do swear that I will administer justice without respect to persons, and do equal rights to the poor and to the rich, and that I will faithfully discharge all the duties incumbent on me as a justice of the peace for the County of ———, agreeably to the constitution and laws of this State, and according to the best of my ability and understanding. So help me God.”

§ 48. Hawaiian Islands—ELIGIBILITY—citizenship. APPOINTMENT—by the attorney general. TERM—until removal. OATH—to be subscribed to and filed in department of attorney general. SEAL—to be procured, having engraved on it the name of the notary, and the

words, "Notary Public," "Territory of Hawaii." **ANNUAL LICENSE FEE**—\$10.00 for Honolulu and \$5.00 for other judicial circuits. **DUTIES AND LIABILITIES**—when requested, notary must enter on record all losses or damages sustained or apprehended by sea or land, all averages, such other matters as by mercantile usage appertain to his office, and cause protest of same. All facts, extracts from documents, shall be signed and sworn to by persons appearing for protest. He shall note, extend and record same, grant copies under his signature. Present for payment, etc., and protest, and give notice, of negotiable paper, and other duties usual by usage of merchants; same to be legal evidence. Also has power to administer oaths, take depositions and acknowledgments. Must inspect and note erasures or changes before taking acknowledgment, under penalty. False or misleading statements in certificate subject to penalty as well as liability for civil damages. False certificate of acknowledgment, guilty of forgery. **RECORD**—to be kept of all official acts. **REMOVAL**—by resignation, death or otherwise, records to be deposited with clerk of nearest court of record. Neglect to do so subjects to penalty. **FEES**—noting protest, \$2.00, each; notice of, \$2.00; noting any other protest, \$3.00; each notice of, \$3.00; depositions, \$2.00; oath and certificate, 25c.

§ 49. **Idaho**—**ELIGIBILITY**—qualifications of an elector. **APPOINTMENT**—by the governor. **COMMISSION**—fee—\$10.00. **TERM**—four years. **BOND**—with two or more sureties for \$1,000, approved by the county probate judge. Bonds of surety companies authorized to do business in state need not be approved. **OATH**—to be taken. Bond and oath of office with signature and impression of his official seal to be filed with the secretary of state. Certificate of the filing under the seal of the secretary of state must be filed with the clerk of the county district court. **DUTIES**—to demand acceptance and payment of bills of exchange, or promissory notes; to protest same for nonacceptance or nonpayment, and such acts as the law of nations and commercial usages require; to take acknowledgments, depositions, administer oaths and affirmations. **PROTEST**—under his hand and seal, stating presentment and nonacceptance or nonpayment thereof, the service of notice specifying the mode, place of residence of the party and the postoffice nearest to, is prima facie evidence of the facts. **SEAL**—to provide and keep an official seal having on it "Notary Public" his name and "State of Idaho." All official acts to be authenticated with same. **RECORD**—of his official acts to be kept by him, and to give certified copies of when requested and paid for. **REMOVAL**—by death, resignation or removal from the county, or disqualification, his records and papers must, within thirty days, be delivered to the county recorder, who must deliver them to the notary's successor. A notary having the records and papers of his predecessor may grant certificates or give certified copies with same effect as his predecessor. **LIABILITY**—for official misconduct or neglect the notary and his sureties are liable to the parties injured for all damages. **FEES**—protesting, \$3.00; serving notice of protest, \$1.00; recording protest, 50c; drawing papers not here provided for, per folio, 30c;

taking an acknowledgment, 50c; administering oath, 25c; certificate under seal, 50c.

§ 50. **ILLINOIS—ELIGIBILITY**—twenty-one years of age; a citizen of the United States, and a resident of Illinois for one year. **WOMEN**—are eligible. **APPOINTMENT**—by the governor, with the advice and consent of the senate. As many as he deems necessary in each county. A petition, signed by fifty legal voters of the city, town, village or precinct where the applicant resides shall be sent with the application. **COMMISSION**—fee—payable to the secretary of state when the application is made, \$2.00. **TERM**—four years, unless sooner removed by the governor. **BOND**—payable to the people of the state of Illinois, for \$1,000, with sureties approved by the governor, conditioned for the faithful discharge of the duties of the office. **OATH**—to be taken and subscribed to. Oath and bond to be deposited with the secretary of state. On receipt of commission, same must be recorded in the office of the county clerk, for which a fee of 25c shall be paid. **SEAL**—an official seal shall be procured, with engraved words descriptive of the office, the name of the place or county where resident. With this he shall authenticate his official acts. All the above is required before acting. **DUTIES AND POWERS**—to protest negotiable instruments for non-acceptance or nonpayment, although protest is not required except in the case of foreign bills of exchange. Notice of dishonor to be given in accordance with the Uniform Negotiable Instruments Law, art. VII, secs. 89-118, post ch. V. **JURISDICTION**—can execute the duties of his office throughout the state, while he remains in the same county. **RECORD**—to be kept of all protests and notices of same with description of instrument and amount. **REMOVAL**—by expiration of office or death, all his official records shall be deposited with his county clerk. If reappointed to office he shall retain same throughout the term of reappointment. **CERTIFICATE OF MAGISTRACY**—can be procured from the clerk of the county where entry was made under the clerk's hand and official seal, or can be procured from the secretary of state, under the great seal of the state. Fee, 25c. All notarial acts of notaries in this state authenticated by seal prior to the passage of the present law are held good and valid. Act of May 1, 1873 (J. & A. ¶ 7844). All certificates of notaries in this state, prior to the present law, failing to show the name of city, town or county for which the notary was commissioned, if shown from the certificate to have been performed in this state, are validated. (Laws 1869, J. & A. ¶ 7851.) **LIABILITY**—for neglect. Where the law imposes an obligation and confers the power to enforce it, it implies a liability for neglect of the obligation. *Gillett v. Ellis*, 11 Ill. 579. **FEES**—for taking acknowledgment of a deed, mortgage, power of attorney, or other writing, with certificate under seal, 25c; for noting a bond or promissory note, or bill of exchange for protest, 25c; for protesting bond or bill of exchange, 75c; for noting protest, 25c; for noting marine protest and furnishing one copy thereof, \$1.00; for extending marine protest and furnishing one copy thereof, \$4.00; each additional copy furnished, \$1.00; for giving notice to drawees

and indorsers, each, 25c; for any other certificate under seal, 25c; for administering oath to an affiant, 25c; for taking depositions, for each 100 words, in counties of first and second classes, 15c; in counties of the third class, 10c.

§ 51. **Indiana**—**ELIGIBILITY**—certificates of good moral character and qualifications from the judges of the circuit courts of the county of the applicant. **WOMEN**—are eligible. Prosecuting attorney and member of legislature may perform duties of notaries. **APPOINTMENT**—by the governor. **COMMISSION**—fee—\$1.00. For recording bond, 25c, to secretary of state and clerk of circuit court. **TERM**—four years. Wilfully acting after expiration subject to a fine from \$25 to \$500. **BOND**—to be filed with the clerk of the county circuit court; approval by him for \$1,000. **OATH**—to be taken before entering upon their duties. **POWERS**—to do all acts authorized by the common law and the custom of merchants; to take and certify acknowledgments, affidavits, depositions; administer oaths. **JURISDICTION**—throughout the state but not compulsory beyond his resident county. **SEAL**—to procure a seal indicating his official character, with such other devices as he may choose. All acts not attested by such seal to be void. But one protest on bank notes. All the bank notes held or owned by any individual or his lawful attorney on any one day and presented at any bank for protest, shall be, by the notary public, carefully counted, sealed up in a package, and forwarded to the office of the auditor of state, and shall be entitled to but a single protest. **PENALTIES**—imposed for office holder acting as a notary, falsely attaching affidavit or acknowledgment, failure to explain instrument, acting after term expires, exacting fees for more than a single protest of bank notes, and for failure to state date of expiration of commission in certificate, etc. **RECORD**—of official acts may be kept. A notary's certificate, attested with his official seal, is presumptive evidence of the facts stated. Applicable to all notaries in the United States. **WHO CANNOT ACT AS A NOTARY**—an officer in any corporation, association or bank in the business of such concerns cannot act as a notary; nor a person holding a lucrative office there. An acceptance of such vacates his office as notary. Jurat must give expiration of his office under a penalty of \$25. **FEES**—certificate and seal, 50c; taking deposition, for 100 words, 10c; administering an oath, 10c; each protest, 50c; each notice of protest, 25c; record of same if kept, 50c; copying protest, for 100 words, 10c; acknowledgments and seal, 25c; certifying to certificate of parent or guardian, 10c.

§ 52. **Iowa**—**ELIGIBILITY**—citizenship. **APPOINTMENT**—by governor. **COMMISSION**—fee—\$5.00. If satisfactory the commission will issue from the secretary of state, who will advise the clerk of the district court of the county. He will file same for record. Revocation occurring, the governor will advise the party and the clerk of the district court. **TERM**—three years from July 4. Governor will notify of expiration on or before May 1 of year of expiration. **BOND**—for \$500, approved by the clerk of the county district court, shall with signature and

impression of official seal attached be filed with the governor. OATH—to be taken. POWERS and duties of the office are such as pertain by the custom law of merchants. May take acknowledgments in counties adjoining that of their residence in which a certified copy of their certificate of appointment may be on file with the clerk of the district court. SEAL—to procure a seal having the words "Notarial Seal," "Iowa," and the notary's name at length and at least initials of Christian name. RECORD—of all notices sent and to whom sent is required. REMOVAL—from office or the county, the records of the office are to be deposited with the clerk of the county district court within three months under penalty and liability to party injured thereby, clerk to keep same and give attested copies of when required. LIABILITY—acting after removal or expiration of office, or signing documents when the parties have not appeared before him, shall be fined not less than \$50 and removed from office. FEES—protesting, 75c; registering protest, 50c; being present and noting a demand, tender or deposit, 50c; administering an oath, 5c; certifying to same under seal, 25c; certificate under seal, 25c; other services same as justices of the peace; drawing and certifying an affidavit, 25c; affixing seal, 35c; manuscript of papers under his control, for 100 words, 10c; taking deposition, for 100 words, 10c.

§ 53. **Kansas**—ELIGIBILITY—citizenship. WOMEN—not eligible. APPOINTMENT—by governor. The commission, bond, oath of office, signature and impression of his seal to be recorded with the clerk of the county district court and a fee paid of one dollar. After record the papers to be sent to the secretary of state with a fee of \$1.00 for filing the same. TERM—four years. BOND—to be given with one or more sureties approved by the county district court clerk for \$1,000. OATH—to be taken. DUTIES AND POWERS—to take acknowledgments, administer oaths, demand acceptance or payment of bills of exchange and promissory notes, protest same when required, and to exercise such other powers and duties as required by the law of nations and commercial usage. No notary shall take acknowledgment or administer oath when acting himself in behalf of a corporation. JURISDICTION—county of appointment. Notary residing in town or city located in two or more counties is authorized to act in either county on filing bond and oath in each county. SEAL—to be procured containing notary's name and place of residence. All official acts to be authenticated with it. SIGNATURE—notary shall add to signature date of expiration of commission. Neglect of same is misdemeanor punishable by fine of \$100. FALSE ACKNOWLEDGMENT—penalty for making false certificate is fine not to exceed value of property conveyed or affected. RECORD—to be kept of official acts, certified copies to be given when required, and customary fee paid. Protests for banks shall be kept in a book provided by the bank for that purpose, the same to be delivered to the bank when removed from office. REMOVAL—from office by resignation, disqualification, death or otherwise, all official records and papers to be placed on file with the clerk of the county district court within thirty days. Limitation of suit against a notary or his sureties is three years after

the action accrues. FEES—protest and recording, 25c; notice of, 10c; certificate and seal, 25c; other services, the same fees allowed district court clerk; pension cases, no fee over 15c.

§ 54. **Kentucky**—**ELIGIBILITY**—must be twenty-one years of age, resident of county, person of good moral character and capable of discharging his duties, which facts must be indorsed by approvers of application. **WOMEN**—may be appointed. **APPLICATION**—in writing, must be approved by circuit judge, circuit clerk, county judge, county clerk, magistrate, or members of general assembly of county of residence of applicant. Such officers are prohibited from charging any fee for their approval. **APPOINTMENT**—the governor, with consent of the senate to issue commission. **COMMISSION**—fee—\$2.00. **TERM**—four years. **BOND**—with good sureties to be filed in his county court for faithfulness. **OATH**—to be taken in his county court before acting, to honestly and diligently discharge the duties of his station. **DUTIES AND POWERS**—take acknowledgments, oaths, protest commercial paper. **NOTICE OF DISHONOR**—after protesting, notice of dishonor to be sent to all parties thereto; to fix their liability when their residences are unknown to him, he shall send the notices to the holders. Names of the parties to whom notice was sent shall be stated in the protest, also the time and manner of. **JURISDICTION**—named in the commission. **SEAL**—to be procured to authenticate acts. **RECORD**—of protests to be recorded in an indexed book, copies of which, certified by the notary under his official seal, shall be prima facie evidence in all courts of this commonwealth. **REMOVAL**—by expiration, death, or otherwise, all records of office to be filed with the clerk of the county court. The clerk's certified copies from such records shall be evidence in all the courts of the state. Date of expiration of commission to be stated on all his certifications. His signature and official seal is sufficient authentication when placed on all instruments required. Vacancies filled by the governor during the senate's recess, the appointment to expire at the end of the next session of the senate. Protests in other states properly certified shall be received as evidence in this State. **LIABILITY**—a false statement in protest of notices being sent shall be deemed false swearing, for which he shall be confined in the penitentiary not less than one nor more than five years. Failure to record protests, subject to forfeiture of fee and a fine of \$5.00 recoverable before any justices of the peace. **NOTARIAL FEES**—every attesting, protesting, or taking, acknowledging, and certifying, under seal, 50c; recording same, 75c; notice of protest, each, 25c; administering oath with certificate, 20c.

§ 55. **Louisiana**—**ELIGIBILITY**—a male citizen, twenty-one years of age, resident of the parish five years, to pass examination before the judge of the supreme, district or parish court. In New Orleans, two years' residence, of good moral character and competent. **APPOINTMENT**—by the governor with consent of senate. N. O. parish, not over 185 can be appointed. **TERM**—five years, or as often as bonds are renewed. **BOND**—\$5,000 for Orleans parish, \$1,000 for other parishes, with

approved security, executed before any district court clerk, same with certificate to be filed with auditor of public accounts. Renewable every five years. In New Orleans, \$10,000, with one or more good solvent securities appointed by judge of New Orleans civil district court. OATH—DUTIES—to make inventories, appraisements, partitions, receive wills, protests, matrimonial contracts, conveyances, contracts and instruments in writing; to hold meetings of creditors and families, take acknowledgments, affix seals upon deceased persons' effects, and raise same; to administer oaths. JURISDICTION—their resident parish. SEAL—to procure seal. RECORD—required for protests parties, etc., with facts. Also all deeds to be recorded with register for New Orleans within 48 hours after passage. Acts to be performed in their office unless party prevented. NAMES—Christian name of married or widowed woman to be given, adding that she is the wife or widow of —. Christian name and not initials always to be given by notary under penalty of \$100. Registration refused if otherwise. Married women over twenty-one years can, with husband's consent, renounce their dotal, paraphernalia and other rights in favor of third parties. Sale of property acts cannot pass until all taxes are paid. Penalty for violating is \$50 to \$200. Movable property acts to be recorded with parish recorder; also marriage contracts and all acts passed within fifteen days. In New Orleans the office to be kept in a brick building, covered with tile, slate or terrace, under penalty. LIABILITY—to suspension and damages for malfeasance, failure to record acts. Absence granted by governor. Custodian of notarial records for parish of New Orleans to charge same fees as notaries for copies. FEES—original writing, per 100 words, 20c; writing by others and passed by notary, 25c; recording same, per 100 words, 10c; certificate and seal, every time, 25c; copies of documents, per 100 words, 10c; proving acts under private signature, 25c; proving same, per 100 words, 10c; certificate to mortgage and seal, \$1.00; and for per 100 words after first 100, 20c; canceling mortgages and seal, \$1.00; seal on effects of deceased persons, \$2.00; swearing appraisers, each, 25c; recording acts of other notaries, per 100 words, 10c; inventories out of office, per hour, 50c (not over 12 hours to be charged); process, verbal, of inventory, per 100 words, 25c; and recording certificate and seal, 25c; inventories in the office, per 100 words, 20c; partitions, per 100 words, and recording, 20c. Receipted fee bill to be given each person when paid.

§ 56. Maine—ELIGIBILITY—a citizen. APPOINTMENT—by the governor with consent of the council. COMMISSION—fee—\$5.00, to be paid before acting. TERM—seven years. BOND—to be given. OATH—of office to be taken and subscribed to. DUTIES AND POWERS—when requested he shall record all losses or damages sustained or apprehended on sea or land, and all averages, and such other matters pertaining to his office; grant warrants of survey on vessels; all facts, extracts from documents and circumstances so noted, signed and sworn to by the parties protesting; he shall note, extend and record the protests made, grant authenticated copies thereof under his signature and official seal when requested and paid for; present any negotiable paper for acceptance

or payment to party liable; notify parties thereto; record and certify contracts; take depositions the same as a justice of the peace and quorum; take acknowledgments; administer oaths; certify country products, and do all acts authorized by law and the usages of merchants. Notary who is member of a corporation may act, but act is unlawful when notary is party to instrument. **SEAL**—shall keep a seal having engraved thereon his name, "Notary Public," "Maine," the state coat of arms, or other device, as he chooses. **RECORD**—to record same in a book for that purpose. Acts under his seal and signature shall be received as evidence in all courts. **REMOVAL**—by resignation or otherwise, or by death, his records shall, within three months, be deposited with the clerk of the county judicial courts. Neglect forfeits from \$50 to \$500. **LIABILITY**—a wilful destruction, defacing or concealment of records forfeits not less than \$200 nor more than \$1,000, and liability for damages to party injured. The penalties provided for one-half accrues to the state, balance to the prosecutor. The secretary of state shall, on the first day of June and December, forward to the clerks of the state courts, registers of probate courts, judges of municipal and police courts, clerks of the United States courts, and United States pension agents in the state, a list of all notaries in the state. **FEE**—for protesting, notifying parties and recording, \$1.50; oaths, affidavits, depositions, 20c; writing depositions, per page, 12c; acknowledgments, 20c.

§ 57. **Maryland**—**ELIGIBILITY**—good character, integrity and abilities, citizens of the United States, resident of this state two years, to be resident in such place designated in the commission. **WOMEN**—are eligible. **APPOINTMENT**—by the governor, with consent of the senate; two to a county. Special laws apply as to number for Baltimore City. **COMMISSION**—fee—\$5.00 to state treasurer and 50c is payable to the clerk issuing the commission. **BOND**—with security for \$6,000 to be given, subject to the approval of the governor, if the appointment is for Baltimore City, and \$2,000 if for any county in the state. Neglect to give bond within thirty days forfeits the appointment. **OATH**—to be taken and subscribed to before the clerk of the superior or circuit court. **DUTIES**—to administer oaths, take acknowledgments, make protests, certified under his seal of office. Any special acts required to be performed in another county. **SEAL**—of office to be procured by the notary for attesting his official acts, having engraved upon it such device as he may desire and the name, surname and office of the notary and his residence. **JURISDICTION**—in other cities and counties as well. **RECORD**—of all official acts to be kept and certified copies given when required and payment made for. **REMOVAL**—by death or otherwise all official records to be deposited with the county court clerk within sixty days. If in Baltimore, in the office of the superior court clerk. One-half protest fees to be paid the state treasurer in the first week of January, April, July and October, under forfeiture of \$50 in each case, providing fees exceed \$350 per annum, and in Baltimore \$500. The statement of protest fees to be given upon oath. No protest to be signed or issued unless stamped by the comptroller, under penalty of \$500 for each offense,

to be recovered by indictment, one-half for the state, balance for the informer. No protests to be rejected as evidence if otherwise admissible. **LIABILITY**—for misfeasance or unfaithfulness in office. **NOTARIES PUBLIC FEES**—protesting, \$2.00; drawing proceedings exceeding two sides, 50c; do., per side, 25c; registering or copying proceedings, for every side, 10c; presenting for acceptance, if accepted and not protested, \$1.00; noting for nonacceptance, if not protested, \$1.00; noting a marine protest, \$1.00; affixing seal, 50c; every search where no copy is made, 25c; administering an oath or taking an acknowledgment, 12½c; traveling more than 3 miles, per mile, 20c; each notice mailed or delivered, 5c; presenting and collecting note or bill, \$1.00; other acts in proportion.

§ 58. **Massachusetts**—**ELIGIBILITY**—citizenship. **APPOINTMENT**—by the governor, with consent of the council. **COMMISSION**—fee—\$5.00. **TERM**—seven years, unless removed. **BOND**—none required. **OATH**—must take. **DUTIES**—can administer oaths, take affidavits of banks, protest commercial paper, and give notice of, take acknowledgments, acknowledgments of limited partnerships; depositions and oaths. Railroad and street railway police may take oath before. Notice to owners of insecure buildings, who live out of the commonwealth, may be served by a notary public, under his official seal. Notaries can be appointed registrar of voters, state ballot commissioner and license commissioners. Jurisdiction in all counties of the state. **SEAL**—official seal required. **RECORD**—to be kept of official acts. **REMOVAL**—by governor with consent of council. **LIABILITY**—knowingly destroying, defacing or concealing records or official papers subjects to a penalty not exceeding \$1,000 and liability for damages. Forgery of certificate or record, a crime. Acting after expiration of office is punished by fine of \$100 to \$500. Must be satisfied as to the identity of party making oath to nomination papers under penalty of \$10 to \$50 for each offense. **FEES**—protesting, \$500 or more, \$1.00; protesting, less than \$500, 50c; recording same, 50c; noting, 75c; notice, each, 25c; provided a \$500 or more does not cost over, \$2.00; provided less than \$500 does not cost over \$1.50; the noting, recording and notice not to cost over \$1.25.

§ 59. **Michigan**—**ELIGIBILITY**—twenty-one years of age, resident of the county and a citizen of the state. **WOMEN**—are eligible. **APPOINTMENT**—by the governor. **COMMISSION**—on a written application, stating age, and the indorsement of a member of the legislature, or of the circuit or probate judge of the county, district or circuit where applicant resides, same to be presented to the governor with a fee of \$1.00 inclosed. **TERM**—four years. **OATH**—to be taken before the county clerk and with him filed within ninety days after receiving notice of appointment. On the last day of December, March, June and September the clerk transmits to the state treasurer and secretary of state a written list of all persons and their addresses to whom he has delivered commissions during the quarter; also the date of the filing of their oath and bond. For which applicant pays 50c. County clerk, if appointed, files his oath with the county probate judge. **BOND**—\$1,000,

approved by the county clerk. **DUTIES AND POWERS**—to take acknowledgments of deeds, oaths, affidavits, demand acceptance of bills of exchange, promissory notes, protest same for nonpayment or nonacceptance, and such other duties required by the law of nations and commercial usage, other states, government, or country. Cannot act if individually a party to instrument. Residence must be in the county for which appointed, but they can act throughout the state. Always state expiration of commission. **SEAL**—to provide a seal to authenticate his acts. **REMOVAL**—when occurring, all official records and papers shall be deposited with the county clerk within three months under a penalty of \$50 or \$200. **RECORDS OF THE OFFICE**—to be kept on file by the county clerk. If previously destroyed or concealed, the party so doing shall forfeit and pay damages to the party injured not exceeding \$500. Attorneys in a case cannot administer oaths when notaries. Acts received as presumptive evidence when under his hand and official seal. **FEES**—administering oath for pension, etc., to soldiers or sailors, 15c; no fee for administering oath of office to legislators, military or township officers; protest, when necessary by law, 50c; protest, otherwise, 25c; notice of protest, each, 25c; affidavit, per folio, 20c; copy, per folio, 6c; drawing affidavit or other papers not mentioned, per folio, 20c; copying the same, per folio, 6c; taking acknowledgments, etc., 25c for one, 10c for additional.

§ 60. **Minnesota**—**ELIGIBILITY**—citizen of the state, twenty-one years of age, resident of county. **APPOINTMENT**—by governor with consent of senate. **COMMISSION**—fee—\$3.00. Record of commission to be made with the clerk of the county district court on payment of \$1.00. **TERM**—seven years. **BOND**—\$2,000, with sureties approved by the governor filed with secretary of state. **OATH**—required for faithfulness, etc., which, with the bond, to be filed with the secretary of state. **POWERS**—jurisdiction throughout the state while resident of the county for which appointed. To administer oaths, take depositions, certify acknowledgments, receive, make out and record notarial protests, to compel attendance of witnesses in taking depositions. Officers or stockholders of corporations may act when notaries. **SEAL**—must provide with same design on as the state seal, together with the words "Notary Public," and name of the county where resident. **RECORD**—to be kept of protests and notices. **REMOVAL**—the seal and register to be deposited with the clerk of the county district court. **LIABILITY**—for acting after expiration of office or for appending signature when parties have not appeared before him, guilty of misdemeanor. For overcharging or misfeasance in office subject to removal. **FEES**—witnesses, per day, \$1.00; witnesses, travel, per mile, 6c; commission for taking deposition, per folio, 15c; protest, when necessary by law, \$1.00; protest, otherwise, 25c; notice of protest, each, 25c; drawing affidavit, per folio, 20c; copying affidavit, per folio, 6c; administering oath, 25c; taking acknowledgments, 25c; taking deposition, per folio, 15c; recording instrument, per folio, 10c. **SIGNATURE**—must print, typewrite or stamp his name after his signature and indorse date of expiration of commission.

§ 61. **Mississippi**—**ELIGIBILITY**—citizen. **APPOINTMENT**—by the governor. **COMMISSION**—fee—\$5.00. **TERM**—four years. **BOND**—for \$2,000, with sureties approved and conditioned by the board of supervisors and county chancery clerk. **OATH**—to be taken. Oath and bond to be filed with the clerk of the county chancery court. **DUTIES**—to administer oaths incident to his office, receive proofs or acknowledgments, make declarations, and other matters commercial usage requires, all under official seal. **SEAL**—to be provided, having on the name of the city or town, with that of the state, his name on the margin, and “Notary Public” across the center. All his official acts to be attested with same. **RECORD**—he shall keep a register of all his official acts and give certified copies of same when requested and paid for. **REMOVAL**—by any cause, all official papers and records to be deposited with the county circuit court clerk within thirty days. The clerk may maintain action for them. *Ex officio* notaries, justices of the peace, clerks of the circuit and chancery courts, by virtue of their office, can discharge all the duties of notaries and attest their acts by the common seal of office with the same effect. The board of county supervisors to provide a notarial seal with the inscription, “Notary Public of the County of ———,” around the margin and the image of an eagle in the center, which seal shall be kept in the office of the clerk of the circuit court for the use of *ex officio* notaries public. **LIABILITY**—unfaithfulness in office. **FEES**—Protesting, \$1.00; registering same, 50c; attesting letters of attorney, 50c; affidavit to an account, 50c; oaths, 50c; notarial procuration and seal, \$1.00; certifying sales at auction, 50c; taking proof of debts, 50c; copy of record and affidavit, \$1.00; insurance protest, \$1.00; acknowledgment, 25c.

§ 62. **Missouri**—**ELIGIBILITY**—age twenty-one years, a citizen of the United States and of this state. **WOMEN**—are eligible. **APPOINTMENT**—by the governor. **COMMISSION**—fee—\$5.00. **TERM**—four years. **BOND**—with two securities for \$2,000. In counties of more than 100,000, \$5,000, approved by the clerk of the county court (in St. Louis, by the clerk of the circuit court). Bond and oath shall be filed and recorded with the county clerk; in St. Louis, with the circuit clerk. The bond after recording shall be filed with the secretary of state. No suit shall be instituted against any notary or his sureties more than three years after action accrued. New bond required on verified statement of citizen that bond is insufficient. **OATH**—to be taken and indorsed on the commission. **DUTIES**—may administer oaths and affirmations, take acknowledgments, affidavits, depositions, make declarations and protests, under official seal. Have the power and perform the duties of register of boatman. **SEAL**—shall provide a notarial seal having on their name, “Notary Public,” county or city where resident, and the name of the state. Shall designate in writing, in certificates signed by them, the date of expiration of their commission; shall not change their seal. Shall authenticate all their official acts therewith. **RECORD**—shall keep a record of their official acts, except those connected with judicial proceedings. **LIABILITY**—upon the application of any clerk of a circuit

or criminal court of this state the secretary of state shall send to the clerk the original bond of any notary when required as evidence in a suit at law or for any indictment, the clerk to safely keep and return same when suit is determined. FEES—noting for protest, 15c; noting without protest, 35c; entering protest, 35c; registering protest, 35c; notice to each indorser, 15c; travel, per mile, 8c; taking acknowledgments, etc., 50c; marine or fire insurance protest, \$5.00; drawing contract of a boatman, 75c; certificate attested by seal, 50c; entering of a boatman not acting according to contract, 15c; sealing same, 10c; copies of records, etc., per 100 words, 15c; other fees the same as justices of the peace.

§ 63. **Montana**—**ELIGIBILITY**—a citizen of the United States and the state for at least one year preceding appointment, and must continue to reside in state. **APPOINTMENT**—by the governor. May be removed on ten days' notice. **COMMISSION**—fee—\$5.00. File with county clerk, fee, 50c; each certificate, \$1.00 to secretary of state; to clerk, 50c. **TERM**—three years. **BOND**—\$1,000, approved by secretary of state. Same, with oath and signature to be filed with secretary of state. Fee, \$2.00. **OATH**—to be taken. **DUTIES**—demand acceptance, payment of or protest of commercial papers; take acknowledgments, depositions, affidavits; administer oaths, etc.; give certified copies of records in his office when required and paid for. May act for corporation unless individually party to instrument. Jurisdiction throughout state. **SEAL**—to provide a seal, having engraved on "Notarial Seal," state, his surname and at least initials of Christian name. All his official acts to be authenticated with same. On certificate following words "notary public for State of Montana," must appear, residence and date of expiration of commission. Always sign name and office. **RECORD**—to be kept of official acts. **REMOVAL**—from office, official documents, etc., to be deposited with the county clerk. Liable for neglect to do so. Clerk to furnish certified copies when required and paid for. **LIABILITIES**—with bondsmen, for misconduct and neglect. Attempts at fraud or deception, penalty one to fourteen years. **FEES**—protesting, \$1.00; notice of protest, \$1.00; recording every protest, \$1.00; maximum fee, \$2.50 for protest; affidavit, deposition, per folio, 20c; acknowledgments, \$1.00; additional signature, 50c; oaths, 25c; certifying affidavit with oath, 50c.

§ 64. **Nebraska**—**ELIGIBILITY**—resident of county. **WOMEN**—are eligible. **APPOINTMENT**—by the governor upon petition of twenty-five legal voters of the county. **COMMISSION**—shall be forwarded to the county clerk, who shall within five days notify the person appointed of its receipt, the person shall within thirty days execute a bond, deliver it to the clerk, qualify, and receive his commission. Fee to secretary, \$1.00; to clerk, \$2.00; both payable to the county clerk. **TERM**—six years, unless sooner removed. **BOND**—to be given for \$2,000, with two county resident sureties, or one surety if an incorporated surety company authorized by the state to transact such business. Sureties shall

make oath on the bond that they are resident freeholders of the county and are worth at least \$2,000 over all indebtedness and liabilities, and subscribed to before a person authorized to take oaths, who shall attach his certificate. OATH—to be indorsed on the bond, subscribed and certified before an authorized officer. The county clerk shall file the bond, record the commission, bond, justification of the sureties and oath and send the secretary of state notice. DUTIES—within his county, to administer oaths, take depositions, issue summons and punish for refusal to testify, acknowledgments, demand acceptance, payment, or protest and give notice of, and duties customary. His acts and record, certified and sealed over his signature, shall be presumptive evidence in all courts of this state. May procure supplementary commission to act throughout state on filing bond of \$6,000. Filing of copy of bond and certificate prerequisite to acting in another county. SEAL—shall provide a seal having engraved on "Notarial Seal," name of the county, "Nebraska," and, if desired, his name, and the date of expiration of his commission. All his official acts shall be authenticated therewith, including signature, also the date of expiration of office. RECORD—of all his protests, and notices of, shall be kept with copy of instrument, except those recorded elsewhere by law. REMOVAL—by any cause, or removal from the county, or death, within thirty days he shall enter in his official record a certificate, over his hand and seal, that such record is his official record to the time of expiration of office. Deposit it with the county clerk. Failure to comply subjects to a forfeit and penalty of \$200. LIABILITY—for any neglect or misconduct in office on official bond. Removable by governor, on hearing, for malfeasance. FEES—protest, \$1.00; recording same, 50c; notice of protest, each, 25c; administering oath, 5c; taking affidavit, 25c; taking deposition, each 100 words, 10c, and no more; certificate and seal, 25c; taking acknowledgments, 50c.

§ 65. Nevada—ELIGIBILITY—a qualified elector. WOMEN—over twenty-one years of age, who have resided in the state one year and in the county or district six months preceding appointment, are eligible. APPOINTMENT—by the governor. COMMISSION—fee—\$10, to secretary of state. TERM—four years, unless removed. BOND—for \$2,000, sureties approved by county district judge. OATH—to be taken and indorsed on commission. Bond and oath to be recorded with county clerk. DUTIES—to demand acceptance and payment or protest commercial papers, take acknowledgments on the instrument or attached, depositions, affidavits; administer oaths, proofs, etc. May act for bank if not individually party to instrument. JURISDICTION—the state. SEAL—to provide a seal having engraved on his name, county, initials of the state and words "Notary Public." All official acts to be authenticated with same. RECORD—to be kept of all acts with names of parties, etc. This and seal are exempt from execution. REMOVAL—by any cause, records to be delivered to the county recorder within sixty days, or to his successor on the termination of his office. LIABILITY—for neglect or misconduct, with damages and a fine not exceeding \$2,000, with removal. Certified copies of his records, under his hand and seal,

are prima facie evidence in courts of the state. FEES—drawing and copying protest, \$2.00; serving notice of protest, \$1.00; drawing affidavit, deposition or other paper not provided for, per folio, 30c; taking acknowledgment with seal and certificate, for first signature, \$1.00; additional signatures, each, 50c; administering oath or affirmation, 25c; each certificate including writing and seal, 50c.

§ 66. New Hampshire—ELIGIBILITY—qualified to vote. WOMEN—are eligible. APPOINTMENT—by governor, with advice of the council. COMMISSION—fee—\$1.00. TERM—five years. BOND—none required. OATH—to be taken. DUTIES AND POWERS—protest bills, notes, etc. Same certified under his hand and official seal shall be evidence of the facts stated. In addition, he shall have the same powers as justices of the peace as to depositions, acknowledgments and oaths. REMOVAL—by any cause, within six months, all records, etc., must be deposited with the secretary of state. Deposit to be made by representative in cases of death, insanity, etc. Certified copies given when required and paid for. LIABILITY—refusal or neglect to deliver records on demand, or knowingly destroying or concealing same subjects to a fine not exceeding \$1,000, one half for the prosecutor, the other half for the county; also liable for damages for injuries resulting to any person. For overcharging, a fine of \$50 each time. FEES—protesting under seal, 50c; certificate under seal, 25c; waiting on person for payment or witnessing and certifying under seal, 50c; every notice of nonpayment, 25c; taking depositions, per page, 17c; swearing witness and caption of deposition, 34c.

§ 67. New Jersey—ELIGIBILITY—citizenship. WOMEN—may act. APPOINTMENT—by the governor. COMMISSION—fee—\$10.00, to be sent with the application and returned if appointment not made. TERM—five years. Removable at pleasure of governor. BOND—none required. OATH—to be taken and subscribed to before the county clerk for faithfulness in office. Fee for same, 50c. POWERS—to protest bills and notes. SEAL—to be procured to authenticate official acts; not required to oaths. RECORDS—to record all bills of exchange or promissory notes, protested by them, the time, place, when, where, upon whom demand was made, with a copy of the notice of nonpayment, how served, time, when, if sent, manner, to whom, address, time of mailing and where, name to be signed. REMOVAL—by any cause, record to be deposited with the county clerk. Certified copies to be made under their hand and seal when required and paid for. Records of notaries of other states, duly proven copies, shall be received as evidence in any court of this state, notice having been previously given the adverse party. LIABILITIES—for excessive fees and unfaithfulness in office. FEES—protesting foreign bills, \$1.75; protesting notes and inland bills, each, \$100.00, \$1.50; less than \$100.00, \$1.30; forfeit for each overcharge, \$25, with cost for collection; administering each oath, 25c; examination of witnesses, 30c per folio; copy of testimony, 10c per folio; certifying exhibit shown to witness, 15c; taking proof of deed, \$1.00; acknowledgment, \$1.00; affidavit, 25c; acknowledgment of warrant to satisfy judgment,

\$1.00; acknowledgment of foreign deed, \$1.00. **CERTIFICATES OF AUTHORITY**—issued by county clerk for filing with other county clerks. Fee for issuance, 50c; fee for filing same, \$1.00. County clerks to issue certificates showing authority of notary, etc., fee, 25c.

§ 68. **New Mexico**—**ELIGIBILITY**—resident of state one year, twenty-one years of age, of good moral character. **WOMEN**—are eligible. **APPOINTMENT**—by the governor. Military posts in the territory may also have a resident notary, appointed by the governor, who shall be invested with same powers. **COMMISSION**—\$2.50 to secretary of state, \$1.00 to county clerk for recording. **TERM**—four years. **BOND**—to be given to the territory for \$500, with two securities, conditioned for faithful performance of his duties. **OATH**—to be taken and indorsed on his commission before entering upon his duties. Bond, commission and oath to be recorded with his county clerk. To be sued upon by any injured party. **DUTIES AND POWERS**—to administer oaths, affirmations, receive proofs or acknowledgments, make declarations and protests, certify same under their hand and official seal. May be appointed as referees in matters involving dependent or neglected children. **SEAL**—to be procured containing his name, title and county. All acts to be authenticated therewith. **RECORD**—to be kept of all official acts, and certified copies furnished when required and paid for. Penalty imposed for noncompliance. **REMOVAL**—by any cause, all official papers, etc., to be deposited with the county clerk within thirty days, who will deliver same to the successor. The certificate of a notary, under his official seal, shall be prima facie evidence of the facts. **LIABILITY**—any notary public wilfully issuing a false certificate shall be punished by a fine of not less than \$20 nor more than \$500, and liable to the party injured. Penalty imposed for acting when disqualified. Removed for noncompliance with statute, or malfeasance. **FEE**—protest and certificate, \$2.00; notice of, each, 25c; certificate under seal, 25c; oaths, 5c; acknowledgments, 25c. For depositions, noting meetings, \$1.00; noting adjournments, \$1.00; swearing witnesses, 25c; certifying and transmitting record, \$1.50; transcribing, 15c per folio; additional copies, 5c; per folio; mileage, 10c per mile.

§ 69. **New York**—**ELIGIBILITY**—citizen, to reside in county where appointed. **WOMEN**—are eligible. **APPOINTMENT**—by the governor, by and with the consent of the senate; one can be appointed for each bank applying. He can appoint for vacancies during recess of the senate. **COMMISSION**—fee—in New York county, Kings county, or Bronx county, \$10.00. In any city having a federal or state enumeration of more than fifty thousand and less than six hundred thousand, \$5.00. If elsewhere, \$2.50. Neither the clerk of the city and county of New York nor of the county of Kings shall file a certificate of appointment, other than New York or Kings, until \$7.50 is received. **COMMISSIONS**—may be signed by the governor's private secretary. **REMOVAL**—may be made by the governor, the notary to be given a copy of the charges filed against him and allowed hearing. County clerk will notify of ap-

pointment, upon receipt by him of commission, by inclosing notice in an envelope having the clerk's address printed thereon. Failure to file oath of office and pay fee within fifteen days after notice, or within fifteen days after term of commencement, vacates the office. **TERM**—two years from March 30. **POWERS AND DUTIES**—anywhere in the state to demand acceptance and payment, or protest bills and notes, to exercise such powers and duties as the law of nations and commercial usage allow. In the county of his appointment, and elsewhere, to administer oaths, affirmations, take affidavits, acknowledgments, proofs of deeds, etc., certify same. Seal not necessary nor certificate of county clerk for admitting same as evidence. Any notary appointed for any county of the state, upon filing in the clerk's office of any county his autograph signature and a certificate of the clerk of the county, in and for which he is appointed, setting forth the fact of his appointment and qualification as such notary public, may exercise all the functions of his office in the county in which such autograph signature and certificates are filed. Fee for same, \$1.00. The county clerk where so filed shall, when requested, subjoin to any certificate of acknowledgment, signed by such notary, a certificate under his hand and seal stating the facts of filing, that he is acquainted with the handwriting and believes the signature genuine. Such instrument shall then be entitled to be read in evidence or to be recorded. Protest may be made by a notary public, or by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses; must be made on the day of its dishonor. When a bill has been noted the protest may be subsequently extended as of the date of the noting. Notary interested in bank or other corporation may act except when individually a party to instrument. **SEAL**—to procure an official seal for authenticating his official acts. Oaths need not be sealed, nor other acts. **RECORD**—to be kept of official acts. **REMOVAL**—on expiration of office, all records to be delivered to their successors. **LIABILITY**—for misconduct to extent of damages sustained; for accepting a railroad pass. Person acting as notary without appointment or who practices fraud or deceit is guilty of misdemeanor. **FEEES**—notice for nonpayment or assessment of tax on mortgages, 75c; protesting, 75c; notice of protest, 10c; not exceeding five, acknowledgments, 25c; each additional, 12c; oaths, 12c. A fee for an affidavit as to child's age under the employment act is illegal. **MARRIAGE OF FEMALE NOTARY**—female notary securing reappointment under married name may act by signing maiden name in notarial capacity and adding married name in parentheses.

§ 70. **North Carolina**—**ELIGIBILITY**—citizen. **WOMEN**—are not eligible. **APPOINTMENT**—by the governor. **COMMISSION**—fee—\$3.00. Certificate of commission to be filed with the clerk of the court, who shall note the qualifications of the notary. Clerks of the superior courts may act as notaries in their several counties by virtue of their office, and may certify their notarial acts under the seals of their court. **TERM**—two years. **BOND**—none required. **OATH**—to take oath of office before the clerk of their county superior court. **DUTIES AND POWERS**

—to take and certify acknowledgment and proofs, depositions, administer oaths, take affidavits, and take the privy examination of *femmes covert*, verify pleadings in or out of the state. Must state date of expiration of commission after signature. JURISDICTION—throughout the state. SEAL—required. Acts to be attested. RECORD—not required. LIABILITIES—for misfeasance in office. FEES—certificate and seal, 50c; protesting, 50c; each notice, 10c; acknowledgment of chattel mortgage, 25c; seal and certificate, 10c; other services, 20c for every 90 words.

§ 71. North Dakota—ELIGIBILITY—citizen of the state, of either sex, of electoral qualifications. APPOINTMENT—by the governor. COMMISSION—fee—\$5.00. Commission to be displayed in conspicuous place in notary's office and to be recorded with the county district court clerk, together with signature and impression of official seal; fee, 50c. On removal from the county to another county, same method to be pursued. TERM—six years. REMOVAL—by any cause, records and papers to be deposited with the clerk of the county district court within three months after vacancy of office, under penalty of \$50 to \$500, and liability to party injured. BOND—for \$500, with sureties approved by the district or county court clerk. OATH—to be subscribed to. DUTY—to protest bills and notes, etc., and give notice to its maker and indorsers, administer oaths, issue subpoenas, take depositions, and such duties required by law. Service of notice personally or by mail. Oath, bond and impression of seal to be filed with the secretary of state. Notary taking acknowledgment shall indorse date of expiration of commission following signature. Commission to be conspicuously posted, also fee bill under penalty. JURISDICTION—throughout the state. SEAL—notary to procure an official seal. RECORD—to be kept of all protest notices, time, manner of service, names of all parties, description and amount. LIABILITY—acting when disqualified, or for appending official signature to any document when the parties thereto have not appeared before him, is a misdemeanor and on conviction is punishable by a fine of \$100 for each offense and removal from office. FEES—protest notice and postage, 25c; protest, \$1.50; recording same, 50c; taking affidavit and seal, 25c; administering oath, 10c; taking deposition, per 10 words, 1½c; certificate and seal, 25c; acknowledgment, 25c; witness fees, per day, \$1.00; mileage, per mile one way, 10c.

§ 72. Ohio—ELIGIBILITY—a citizen of this state, twenty-one years of age or over, residing in the county for which appointed, must produce a certificate from a judge of a common pleas, court of appeals or supreme court, that he is of good moral character, a citizen of the county, possessed of sufficient qualifications and ability to discharge the duties of the office; the judge must have personal knowledge of the fact, otherwise the applicant must pass an examination under such rules as the judge may prescribe. No banker, broker, cashier, director, teller, or clerk of any bank, banker, broker, or other person holding any official position to any bank, banker or broker, shall be competent to act as notary in any matter to which said bank, banker or broker is in any

way interested. **APPOINTMENT**—by the governor. **COMMISSION**—fee—\$1.00. Commission, with oath of office indorsed thereon, to be filed for record with the clerk of the county court of common pleas, and indorsement made on the margin of the record and on the back of the commission the time of its receipt, also a proper index to be made of it. A certified copy of same, under the seal of the court, to be given upon application. Fee for recording and indexing, 40c. **TERM**—three years, unless commission is revoked. **BOND**—to be given to the state for \$1,500, with sureties approved by the governor, filed with secretary of state and copy to be filed with the clerk of the common pleas court. **OATH**—to be taken and subscribed on the commission. **POWERS**—within their county to administer oaths, take depositions, acknowledgments, make and record protests. Has powers of justice of the peace in taking depositions, to compel attendance of witnesses. If he resides in a city or town situated in more than one county he can protest and record within the limits of such city or town. Protests under the laws of this or any other state accompanying a bill or note protested by such notary shall be held and received as prima facie evidence of the facts. It may be contradicted by other evidence. **SEAL**—to be provided by the notary before acting. It shall be not less than 1¼ inches in diameter and surrounded by the words “Notarial Seal, ——— County, Ohio.” (Insert name of county.) **REGISTER**—to be provided by the notary, in which every certificate of protest and note shall be recorded. **REMOVAL**—seal and register are exempt from execution, and upon the death, expiration of office without reappointment, or removal from office, the register shall be deposited in the office of the county recorder. **LIABILITY**—acts done after expiration of term are valid. Knowingly performed, shall forfeit any sum not exceeding \$500, recoverable in the name of the state. Such an act renders the notary ineligible to reappointment. Excess of legal charges, or unfaithfulness or dishonesty in office, on complaint filed and substantiated in the county common pleas court, subjects the notary to removal from office by the court and the fact reported to the governor, and renders the party thereafter ineligible to office. Certifying affidavit without administering oath is misdemeanor, subjecting to fine and removal from office. **FEES**—protesting, demand, notices, on each bill or note, \$1.00, and expenses for going beyond the limits of the city or town; recording same, per 100 words, 10c; taking acknowledgments, 40c; taking affidavits, 40c; taking oaths, 40c; taking depositions, per 100 words, 10c; issuing subpoena, 25c; pension oaths, 10c; certifying claim against an estate, 25c.

§ 73. **Oklahoma**—**ELIGIBILITY**—citizenship. **WOMEN**—are eligible. **APPOINTMENT**—by governor. **COMMISSION**—fee—\$1.00 to secretary, \$1.00 to county clerk. **TERM**—four years. **BOND**—\$1,000, with one or more sureties approved by the county clerk. **OATH**—to be taken. Commission, oath, bond, impression of seal and signature to be filed with the county clerk and secretary of state. **DUTIES**—take acknowledgments, administer oaths, demand acceptance or payment, and protest commercial paper, and such acts as commercial usage requires. **SEAL**—to pro-

vide such, containing his name and residence, and authenticate acts with, adding date of expiration of office. REGISTER—to be kept of his official acts, and certified copies given when required and paid for. Special record to be kept of protests for banks and delivered to them on removal from office. REMOVAL—by any cause, all official books and papers to be deposited with county clerk. LIABILITY—for failure to add date of expiration of commission, fine not exceeding \$50. Limitation of action, three years after cause accrues. FEES—protest and record of, 50c; each notice of, 10c; certificate and seal, 25c; acknowledgments, 25c; affidavits, 25c; other fees same as clerk of the district court. No fee allowed for administering any oath or giving certificate to a discharged soldier or seaman, or widow, orphan or legal representative thereof, for pension, bounty or back pay, nor for any voucher required for periodical dues. Penalty for violating, \$10 to \$25.

§ 74. Oregon—ELIGIBILITY—citizenship, twenty-one years of age. APPOINTMENT—by the governor. COMMISSION—fee—\$5.00 to secretary of state, and \$1.00 to county clerk for recording. TERM—four years, unless sooner removed. BOND—to be given for \$500 with surety. OATH—to be taken before acting. DUTIES—to protest commercial paper and give notice of same to parties in interest immediately. Service to be personal, provided they reside within two miles of the notary, otherwise service by mail. To take acknowledgments and administer oaths. Full faith given to their acts. JURISDICTION—throughout the state. SIGNATURE—to be followed by date of expiration of commission, under penalty of cancellation of commission. SEAL—to be provided and an impression of it with oath and bond to be deposited with the secretary of state. RECORD—to be kept of all notices, manner and time of service, names of parties, description and amount of the instrument, same to be competent evidence in all courts of this state. REMOVAL—by death, etc., the records shall be deposited with the county clerk within ninety days, who shall keep same and give certified copies when required. LIABILITY—a forfeit of from \$50 to \$500 for failure, or for wilful destruction, defacing or concealing of records, and damages to party injured. FEES—protesting, \$1.00; attesting instrument and seal, \$1.00; noting, \$1.00; registering protest, \$1.00; affidavit and seal, \$1.00; acknowledgment, \$1.00; proofs, per folio, 25c; depositions, per folio, 25c; oaths, administering, 25c.

§ 75. Pennsylvania—ELIGIBILITY—of good character, integrity and ability. To reside where designated one year. Resident of the state two years. A stockholder, director or clerk in a bank or banking institution, or in its employ, are eligible not to act for company interested. Residence may be in a different part of the county, or adjoining county, provided an office is kept where the commission names. WOMEN—twenty-one years of age and citizens of the state can act. If one marries while in office, must return governor her commission with married name before performing any notarial act; he will return a new commission without fee. A new bond with security required. APPOINTMENT—by

the governor. COMMISSION—fee—\$25.00 and tax of \$10.00. Treasurer's receipt to be shown before appointment, except when reappointed after recess of senate. If disqualification forbids, a commission money paid will be refunded on a certificate of the facts, indorsed by the governor. TERM—four years. If appointed during recess of senate, the commission expires at the end of the next session of the senate, unless confirmed by the senate, which entitles to a commission for four years from confirmation. BOND—in a sum not exceeding six hundred pounds and two sureties to be given, approved by the governor, same to be recorded in office for recording of deeds within the county. Subject to be sued on by parties injured. OATH—or affirmation—to be taken and subscribed to for the faithful performance of all duties and the state constitution before acting. POWERS—to administer oaths incident to their office, to take acknowledgments or proofs of instruments in writing, to make declarations, to protest, to take depositions and affidavits. ACTS—performed outside of the county are valid. Expiration of office to be stated on every certificate and act. SEAL—to be provided with arms of commonwealth, name, surname and office of notary and place of residence. REGISTER—to be kept of all their official acts and certified copies given when required and fee paid. REMOVAL—for any cause, must, within thirty days, deposit register and official papers with the county recorder, who shall give certified copies of same when required and paid for. Same, certified under his official seal, shall be evidence in all cases when required. LIABILITY—failure or neglect to so deposit subjects to forfeiture and payment of \$100, and the further sum of \$100 for each ten days negligent thereafter, recoverable for the use of the party suing, and shall be liable in damages to persons injured. The recorder may bring action for the register and papers. Their official acts, protests and attestations, certified according to law under their hands and seals of office, may be received in evidence, provided other parties may contradict same by other evidence. TAX—in making up the state tax they shall deduct from the amount due the state the true, legitimate expenses of their offices. In Philadelphia they shall pay annually five per cent of their gross receipts in lieu of other taxes. Returns made under oath annually on or before the 31st day of December. A refusal or neglect of thirty days forfeits their commission. The acts of foreign notaries, in accordance with the laws of their country, shall be prima facie evidence of the matters set forth. The consul or vice-consul of the United States at or near the notary's residence shall certify (under) his seal that such notary is a proper officer and acts are in accordance with the laws of the country. FEES—certificates of copy ready made, 50c; comparing same, per 100 words, 7c; certificates of sales at auction, 50c; taking proof of debts to be sent abroad, proof and acknowledgment of letters of attorney for receiving and transferring public securities, 50c; protesting, 75c; registering, etc., 50c; affidavit, 50c; attesting letter of attorney, 50c; registering foreign sea protest, \$1.00; registering copy of each protest, 12½c; registering foreign bill protested and certificate, 50c; registering protest of a bill

of exchange or promissory note for nonacceptance or nonpayment, 25c; entering or noting sea protest to be deducted from the legal charge for the protest if extended, \$1.00; noting a bill of exchange, note or thing properly protestable, 37½c; drawing and taking proof of the acknowledgment of a bill of sale, bottomry, mortgage, or hypothecation of a vessel or charter party, \$1.00; certifying power of attorney, 25c; drawing and certifying affidavit, \$1.00; oath or affirmation, 12½c; notarial procuration under seal, 75c; letter of attorney, for transferring stock, etc., and certifying same, 50c; drawing and taking acknowledgment or proof of substitution to a letter of attorney, \$1.00; being present at demand, tender or deposit, and noting same, 50c. In Allegheny county—making demand for payment, 50c; protesting same, 50c; registering protest, 50c; each notice, exceeding two, 10c; oaths or affirmations, writing and certifying, \$1.00; probate to bill or account and certifying, 50c; acknowledgments, 25c; each additional name, 25c; depositions, first page, folio cap, \$1.00; depositions, each additional page, folio cap, 75c; marine protests, with affidavits, certificates, seal, etc., \$10.00. In Philadelphia—fees increased 50 per cent except as to acknowledgments.

§ 76. **Philippine Islands**—APPOINTMENT—by courts of first instance and in Manila, by judges of supreme court. Clerks of courts of first instance to be notaries by virtue of office. TERM—two years from January 1st of year of appointment. OATH—to be taken before judge or justice of the peace and recorded with commission in office of clerk of court. CERTIFICATE OF APPOINTMENT—to be forwarded to secretary of governor general. JURISDICTION—in province, or city of Manila, but not elsewhere. SEAL—to be used to affix to papers signed. Metal, having name of province, words “Philippine Islands,” name of notary on margin and words “Notary Public” across center. Date of expiration of commission to be affixed to all acknowledgments. POWERS—to administer oaths, take affidavits, depositions, acknowledgments, or proof of all writings relating to commerce and navigation and other writings commonly proved before notaries. RECORD—to be kept and certified copies given when requested. Record of all protests in detail required. LIABILITIES—affixing seal after expiration of commission is misdemeanor, subject to fine of 1,000 pesos or imprisonment not exceeding one year, or both. Failure to certify certificates of registration, or that parties are exempt from tax, subjects to penalty of 100 pesos, and notary’s commission may be revoked. FEES—protesting, 1 peso 50 centavos; registering, 50 centavos; attesting letters of attorney and seal, 50 centavos; affidavits, 50 centavos; oaths and affirmations, 40 centavos; proof of debts to be sent abroad, 50 centavos; writing affidavit and deposition, 10 centavos each 100 words; certified copy of record and affidavit of its contents, 1 peso; acknowledgments, 50 centavos.

§ 77. **Porto Rico**—ELIGIBILITY—lawyers presenting certificates of good moral character, a citizen of Porto Rico or the United States, of legal age—male. Justice of the peace may act. APPOINTMENT—by supreme court on examination. Regulations published. FEE—\$5.00,

\$1.00 to secretary. BOND—for good character. SEAL—DUTIES—send protocol each month to clerk of supreme court. Documents requiring tax must show treasurer's receipt before making certificates to them. RECORD—to be kept, and open for inspection. REMOVAL—to send books and papers to clerk of supreme court. LIABILITIES—for not sending protocol each month to clerk of supreme court, \$300. Suspended from office on second occurrence. JURISDICTION—no limitation. Documents may be written in English when notary and parties know that language; may be typewritten.

§ 78. Rhode Island—ELIGIBILITY—a citizen. APPOINTMENT—by the governor. COMMISSION—within thirty days after its date, party shall deliver to the secretary of state a certificate that he has been duly engaged thereon, signed by the persons for whom such engagement shall have been taken. Failure to do so forfeits the appointment. Fee for same, \$2.00. TERM—one year to 1st of July of year after appointed. After expiration of office, if not reappointed, he may continue to act thirty days after the 1st day of July in each year. BOND—none seems required. OATH—to be taken for faithful performance of duties. DUTIES—protest bills and notes, take acknowledgments and depositions, administer oaths, and matters within their office. Issue subpoenas. No protest shall be made by any notary who is the president, cashier, director, clerk or agent of any bank or institution for savings, wherein such note, draft or check has been placed for collection or discount. SEAL—official seal required to authenticate acts. RECORD—to be kept of important acts. REMOVAL—by governor after notice and opportunity for defense. Records of official acts to be delivered to successor. LIABILITIES—for failure to deliver records to successor and for unfaithfulness in performance of duties. Penalty for unlawfully certifying to acknowledgment when not qualified. FEES—depositions, per hour employed, 40c; per page of 200 words, 30c; per mile's travel to place of caption, 10c; acknowledgments, 50c; for engaging every officer, 25c; recording and certifying, per page of 100 words, 15c; searching record, by the hour, 40c; noting a marine protest, \$1.00; drawing, recording and extending same, \$1.50; affidavits, 25c; noting a bill, etc., 25c; each notice, 25c; travel, more than one mile, 10c; protest if amount is \$500 or more, \$1.00; if less, 50c; record, 50c; noting nonacceptance of bill, order or draft, etc., 75c; each notice, 25c; whole cost of protest, including notices shall not exceed \$2.00; and whole cost of noting not to exceed \$1.25.

§ 79. South Carolina—ELIGIBILITY—citizen. Must be indorsed by legislative delegation of county. APPOINTMENT—by the governor. COMMISSION—fee—\$2.00. Commission to be exhibited to clerk of court within 15 days after appointment, and notary enrolled. TERM—during the governor's pleasure. BOND—required with approved sureties. OATH—of office and the oath regarding duelling to be taken, and certified copies to be filed with the secretary of state. POWERS AND DUTIES—to administer oaths, take depositions and acknowledgments, affi-

davits, protests and renunciation of dower. JURISDICTION—throughout the state. No jurisdiction in criminal cases. SEAL—of office to be provided, same to be affixed to his acts of publication and protestations. Its absence shall not invalidate his acts, provided his official title be affixed. Use of by notaries in other states required. RECORD—to be kept of important acts. LIABILITIES—on bond for unfaithfulness. FEES—taking depositions and swearing witnesses, per copy sheet, 25c; protesting, 50c and postage; duplicate of deposition, protest and certificate, per 100 words, 10c; for attendance on person for proving a thing and certifying, 50c; notarial certificate and seal, 50c; oath or affidavit, 25c; renunciation of dower, \$1.00.

§ 80. South Dakota—ELIGIBILITY—citizen resident in state. WOMEN—citizens twenty-one year of age are eligible to the office. APPOINTMENT—by the governor. COMMISSION—fee—\$2.50. Same to be conspicuously posted in his office. Notice of expiration will be sent thirty days previously by the secretary. TERM—four years. BOND—\$500, approved by circuit court clerk and filed with secretary of state. OATH—to be taken and filed with circuit court clerk. DUTIES—administer oaths and affirmations in their county, protest commercial papers and serve notice, personally or by mail; take depositions; issue subpoenas. May act for corporation though interested but act is unlawful if notary is individually a party to instrument. JURISDICTION—throughout the state. SEAL—to be procured, an impression to be filed with secretary of state. Fee for each, 25c. RECORD—to be kept of protests and notices with names of parties. REMOVAL—all records to be filed with the circuit court clerk within three months. LIABILITIES—neglect to file records on removal or expiration of office, or destroying same subjects to fine of from \$50 to \$500 and damages sustained by party. Acting after removal, etc., \$100 each offense. FEES—protests, \$1.50; notices, 25c each, and postage; recording, 50c; oath or affirmation, each, 10c; depositions, each 10 words, 1½c; certificate and seal, 25c; acknowledgments, 25c; affidavit and seal, 25c.

§ 81. Tennessee—ELIGIBILITY—citizenship, twenty-one years of age. WOMEN—twenty-one years of age, and in counties of certain population, eighteen years of age, are eligible. APPOINTED—by the justices of the county court. COMMISSION—issued by the governor. FEE—\$3.00. TERM—four years. BOND—to be given with good sureties for \$5,000. OATH—to be taken and subscribed to before the county court clerk or his deputy in his county. DUTIES—to take and certify depositions in their county, to administer oaths, take affidavits, protest bills and notes and notify the proper parties. OFFICE—to be kept in the town of the county in which he was appointed. The county court may require a notary to keep his office where any bank may be located in the county out of the county town, or where convenient to the people. SEAL—of office to be provided by him, and surrendered to the county court when removed by any cause. His acts to be under his official seal, received as evidence. RECORDS—to be kept of protests and notices of.

REMOVAL—or expiration of office—all records to be delivered to successor. **LIABILITIES**—for not delivering books to successor, for failure to surrender seal on expiration of office, and neglect of duty. Fraudulent certificate of probate or acknowledgment is a felony. Notaries of other states may take depositions in their state for use in this state, must certify and show date of commencement and expiration of their commission. **FEES**—for recording in his record book, \$1.00; protesting, \$1.50; taking acknowledgments, 50c; each deposition, \$1.00; for other services same fees as allowed other officers.

§ 82. **Texas**—**ELIGIBILITY**—citizenship. **APPOINTMENT**—by the governor, with senate's consent. **COMMISSION**—secretary of state sends it to the county court clerk, party to appear and qualify within ten days and pay \$1.00 fee. Excusable for absence or sickness. Date of notice to be indorsed on it and notification sent the secretary by the clerk. **TERM**—two years from June 1st after legislative session. **BOND**—\$1,000, with sureties approved by county court clerk. **OATH**—to be taken and subscribed to and indorsed on back of bond. All recorded by clerk. **DUTIES**—take acknowledgments, certify same under his hand and official seal, administer oaths, make declarations, protests, take depositions, etc., incident to the office. **SEAL**—to be provided, having in the center a star of five points and "Notary Public, County of —, Texas," around the margin (filling in his county in the blank space). All official acts to be authenticated therewith. No other seal to be used by him. **RECORDS**—of all his official acts to be kept. Subject to inspection and for certified copies. **REMOVAL**—by death, etc., all records and seal to be delivered to county clerk, under penalty not less than \$100. Can sell his seal. Removal from county vacates office. May be removed for wilful neglect or malfeasance. **LIABILITIES**—false certificate of acknowledgment or false declaration of protest is crime subject to imprisonment from two to five years. Failure to keep record of acknowledgments subject to fine of \$100 to \$500. Liable for negligence and misfeasance. **COUNTY CLERK**—may certify to his official acts. Secretary of state to furnish county clerk's lists of notaries. **FEES**—protesting, registering and seal, \$2.50; each notice, 50c; other protests, per 100 words, 20c; certificate and seal to such, 50c; acknowledgments, 50c; acknowledgments of married women, \$1.00; oath, 25c; certificate under seal, 50c; copies of records, if less than 200 words, 50c; if more, 15c for each 100 words; other acts, 50c; depositions, per 100 words, 15c; swearing witnesses to depositions, seal, certificate, etc., 50c.

§ 83. **Utah**—**ELIGIBILITY**—citizenship over twenty-one years of age and resident of state. **APPOINTMENT**—by the governor. **COMMISSION**—fee—\$5.00. To be recorded with the secretary of state. No suit shall be instituted on bond three years after the cause of action accrues. **TERM**—four years. **OATH**—to be taken before acting and filed with secretary of state. **BOND**—for \$500, with sureties approved by the secretary of state. **POWERS AND DUTIES**—in their county, to administer oaths, take acknowledgments, affidavits and depositions, make

declarations and protests, and other acts usually done by notaries in other states and territories. Date of expiration of their commission to be affixed to all acknowledgments. Protests, when made, written notice to be given the maker and indorsers or security of the instrument as soon as practicable. Service to be personal when the person resides in the same town or city with the notary, otherwise by mail or other safe conveyance. SEAL—to contain the name of his county, state, his surname with at least the initials of his Christian name, and the words "Notary Public," or "Notarial Seal." All his official acts to be attested with it. RECORD—to be kept of official acts, including notices, time, manner of service, names of all parties to whom directed, description and amount of instrument protested. Records shall be competent evidence for legal proof. Certified copies to be given when required and the fee is paid. LIABILITY—affixing their official seal, wilfully, after expiration of their commission is a misdemeanor. FEES—protesting, \$1.00; notices, drawing and serving, each, 35c; recording protests, 50c; affidavit or deposition, for first folio, 50c; subsequent folio, 15c; taking acknowledgments, for first signature, 50c; each additional signature, 25c; administering oath or affirmation, 25c; every certificate including writing and seal, 50c.

§ 84. Vermont—ELIGIBILITY—citizenship. WOMEN—twenty-one years of age are eligible. APPOINTMENT—by the judges of the county court for their county. COMMISSION—fee—not required. TERM—during the term of the judge and for ten days thereafter. BOND—not required. Record to be made with the county clerk of his oath of office, and certificate of his appointment. Clerk shall forward a certificate of same, with term of office, to the secretary of state immediately. OATH—to be taken. DUTIES AND POWERS—protest and give notice of commercial papers, administer oaths, take acknowledgments, issue subpoenas and attachments for witnesses, take depositions. JURISDICTION—throughout the state. SEAL—of office to be provided by him, and affixed to all his official acts. Seal need not be affixed to acknowledgments or oaths. RECORD—protests and notices. LIABILITIES—for neglect, and collecting illegal fees. EX OFFICIO NOTARIES—county and town clerks, by virtue of their office, are notaries public. FEES—protests and notices, \$1.00; certificates under seal, each, 25c.

§ 85. Virginia—ELIGIBILITY—MEN AND WOMEN—eighteen years of age are eligible. APPOINTMENT—by the governor. COMMISSION—fee—for appointment, \$3.00. TERM—four years. BOND—to be given in the county court of or corporation for which appointed, within four months from date of commission, under a penalty not less than \$500, the clerk to immediately forward a copy to the secretary of state, same to be approved by the court or officer taking it. OATH—to be taken. DUTIES—conservator of the peace, administer oaths, protest commercial paper, give notice of, take acknowledgments, oaths and affidavits. When seal is annexed to any pension claim or for military service, either state or national, or when annexed to an affidavit or deposition no tax on seal

charged. No deed or contract to be admitted to record (except for a church or school) or no will admitted to probate, and no grant of administration until tax is paid to the clerk. JURISDICTION—may be appointed for two or more counties. SEAL—procure a seal to authenticate his acts. RECORD—to be kept of his official acts. REMOVAL—from the county or corporation, unless into a county also appointed for, shall be construed as a vacation of office. County clerk or of corporation shall at once inform the governor of vacancies or deaths. LIABILITY—for acting before giving bond and taking oath, removable by governor for misconduct, incapacity or neglect. FEES—protest, record of, notice to one person besides the maker or acceptor, \$1.00; each additional notice, 10c; acknowledgments, 50c; oath, 25c; certifying affidavits or depositions of witnesses, when done in one hour, 75c; each additional hour, 75c. Fees to be stated at the foot of affidavits or depositions, also to whom charged, and if paid, by whom.

§ 86. Washington — ELIGIBILITY — an elector. WOMEN — over twenty-one, residents of state, of good moral character are eligible. APPOINTMENT—by the governor, upon petition of twenty freeholders of the county. COMMISSION—fee—\$10. The secretary of state shall file with the county clerk the date of commission. Either may certify the official character of the notary, when required, under their official seal. Fee, \$1.00. PROCURE A SEAL—having engraved on it "Notary Public," "State of Washington," and date of expiration of commission, with surname in full, and at least the initials of the Christian name. TERM—four years. BOND—to the state for \$1,000, sureties approved by the county clerk. OATH—required. File with the secretary of state, bond, oath, treasurer's receipt and impression of seal, the latter, subject to the approval of the governor. DUTIES—in the county, to protest bills and notes, and matters relating to protest, and such other duties pertaining to the office by the custom and laws merchant, take acknowledgments, depositions, affidavits and administer oaths. Every attorney who is a notary may administer any oath to his client. Seal not required on an oath, but in all other cases it is. Notary who is stockholder or officer of bank or other corporation may act unless party to instrument. RECORD—to be kept of all notices of protests, with time and manner given, copy of the instrument, and notice. Said record, or a copy, certified under the hand and seal of the notary public or county clerk having the custody of the original record, shall be competent evidence to prove the facts stated. The same may be contradicted by other competent evidence. REMOVAL—by death, etc., and at the expiration of office, provided his commission is not renewed, records and official paper shall, within three months, be deposited with the county clerk. Neglect shall forfeit a sum not exceeding \$1,000, recoverable in a civil action by the person injured. The executor or administrator is likewise liable. LIABILITY—for unfaithfulness in office. FEES—protest, \$1.00; attesting with seal, 50c; taking acknowledgment, two persons with seal, 50c; taking acknowledgment, each person over two, 25c; certifying affidavit with or without seal, 50c; registering protest, 50c;

being present at demand, tender or deposit, and noting same besides mileage at 10c per mile, 50c; noting a bill or note for nonacceptance or nonpayment, 50c; copying any instrument or record, besides certificate or seal, per folio, 15c; each oath or affirmation, without seal, 25c; any instrument in writing, depositions or affidavits each 100 words, 25c.

§ 87. **West Virginia**—**ELIGIBILITY**—a citizen of the state must reside in the county of appointment. Must obtain certificate of county court showing good moral character and residence in county. **APPOINTMENT**—by the governor. **COMMISSION**—fee—\$2.50, to state secretary. **TERM**—ten years. **BOND**—to be given for not less than \$250 nor more than \$1,000, with security approved by the county court. Must qualify within sixty days of notice of appointment, otherwise office is vacant. Acting without qualification forfeits not less than \$50 nor more than \$1,000. **OATH**—required to support the state and United States constitutions and to faithfully discharge the duties of the office, filed with county court clerk. **DUTIES AND POWERS**—to administer oaths, take affidavits, depositions, acknowledgments, examine privily married women respecting any written instruments. He shall be a conservator of the peace, exercising therein the powers of a justice of the peace. Protest bills, demand acceptance or payment thereof, and such other duties as commercial usage require. **JURISDICTION**—the county of his appointment. **SIGNATURE**—date of expiration of commission must be added. **SEAL**—to procure and authenticate official acts with. Not necessary in taking oaths, affidavits, depositions and acknowledgments. **RECORD**—to be kept of official acts. **REMOVAL**—all records and official papers shall be deposited with the county court clerk within three months after death or removal from office, under a penalty not exceeding \$500. **LIABILITY**—disqualifications, conviction of treason, felony or bribery in an election, before any court in or out of this state, fighting or encouraging a duel. Wilful destruction, defacing or concealing of the records or papers forfeits a sum not exceeding \$1,000, and damages to the party injured thereby. The protest of bills and notes shall be prima facie evidence of the facts stated if signed by the notary. **FEES**—protesting, recording, drawing instrument and notice, \$1.00; notices, additional, 10c; acknowledgments, 50c; administering and certifying an oath, other than to a witness, 25c; affidavits or depositions of witnesses, per hour employed, 75c; for other services, the same as allowed circuit court clerk.

§ 88. **Wisconsin**—**ELIGIBILITY**—resident elector, twenty-one years of age. **WOMEN**—may be appointed. **APPOINTED**—by governor. **COMMISSION**—fee—\$2.00, payable to secretary of state. Commission must be filed, together with notary's autograph and seal impression, with secretary of state and county circuit court clerk. **TERM**—four years. **BOND**—\$500, and surety approved by the county judge or clerk of the county circuit court. **OATH**—to be taken for faithfulness in office. Oath, bond and seal impression to be filed with secretary of state. **DUTIES AND POWER**—to demand acceptance of bills of exchange, promis-

sory notes, protest same, administer oaths, take depositions, acknowledgments, and other duties accorded by the law of nations or commercial usage. Acknowledgments must state when commission expires. JURISDICTION—throughout the state. SEAL—to have impression of his name, office and county. RECORD—to be kept of official acts. REMOVAL—all records and papers to be filed with the county circuit court clerk. Penalty for failure to so do, within three months, \$50 to \$500. Also liable to injured party for damages arising. Notice of resignation to be sent to the secretary of state, who will notify the county circuit court clerk. Removal from county vacates his office. LIABLE—for misconduct or neglect to party injured. FEES—protest, when necessary, nonacceptance or nonpayment, 50c; protest, otherwise, 25c; notice of protest, 25c; affidavit, per folio, 25c; copying affidavit, per folio, 6c; acknowledgments, 25c; taking depositions, per folio, 12c.

§ 89. Wyoming—ELIGIBILITY—of good moral character, a citizen of the United States, over the age of twenty-one years, able to read and write the English language, a resident of the state and of the county. APPOINTMENT—by the governor on the petition of five or more reputable freeholders of the county. COMMISSION—fee—\$5.00. TERM—four years. BOND—to be given within sixty days of appointment for \$500, with two sureties approved and filed with the register of deeds conditioned for faithfulness in office. OATH—or affirmation—to be subscribed to before any county officer authorized to administer oaths. POWERS AND DUTIES—to administer oaths and affirmations, take depositions, acknowledgments, demand acceptance or payment of bills, promissory notes and obligations in writing, to protest for nonacceptance or nonpayment, and such powers and duties required by the law of nations and commercial usage. Date of expiration of commission to be added to all acknowledgments. JURISDICTION—the state. SEAL—of office to be provided to authenticate his acts, having engraved thereon his name, the words “Notary Public,” the name of his county and Wyoming. RECORD—official register to be provided for recording his official acts. The register and seal not subject to levy or sale. Record to be kept of every bill of exchange, promissory note or obligation received for demand and protest, official acts and dates, name of each drawer, indorser or other person notified and the place where notice was delivered. REMOVAL—for any cause, deposit of register with the register of deeds shall be made within thirty days after expiration of term or removal from office, or death. Neglect to do so subjects him or his executors to a penalty of \$200, recoverable by any citizen of the county, to be applied to the school fund of the county. LIABILITY—persons damaged or injured by his acts may maintain action on his bond, and a recovery shall not bar any future action to the full amount of the bond. It is a crime to sign any false certificate of acknowledgment or jurat, punishable by imprisonment in the penitentiary for three years. Notary acting after expiration of term shall be fined \$25 to \$500. EVIDENCE—his certificate, signed and sealed, shall be presumptive evidence in all courts of this state of the facts stated, provided that any

person interested as a party to a suit may contradict by other evidence the notary's certificate. Each certificate must contain date of expiration of his commission. FEES—protesting, \$1.00; notices, each, 50c; certificate and seal, 50c; oath or affirmation administered, 50c; acknowledgment of, 50c; additional acknowledgment, 25c; depositions, taking, per folio, 15c; other services in taking, directing, indorsing and transmitting, \$5.00.

§ 90. **Canada**—**ELIGIBILITY**—stated in some provinces to be, a British subject, not a barrister or solicitor. Citizenship to be proved by affidavit. In Manitoba and Ontario, applicant is subject to examination before judge of supreme or county court. **APPOINTMENT**—by the lieutenant-governor in council. In some provinces for all or part of province. **TERM**—during lieutenant-governor's pleasure. In Alberta and Saskatchewan, two years. **COMMISSION**—fee—\$5.00, payable to examiner where examinations are held. To act in entire province, \$20.00; lesser jurisdiction, \$10.00; Alberta, \$10.00. Payable to certain revenue funds. **POWERS AND DUTIES**—to attest commercial instruments for protest and perform usual duties of office; take acknowledgments and affidavits. **LIABILITIES**—in Alberta and Saskatchewan, must state expiration of date of commission, or sustain fine of \$10.00 and costs. **OFFICIAL SEAL**—must be provided.

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CHAPTER II.

AFFIDAVITS, OATHS AND AFFIRMATIONS.

§ 91. Oaths, Affirmations and Affidavits; Definitions and Distinctions.—An oath is an outward pledge given by the person that his attestation (or promise) is made under an immediate sense of his responsibility to God. In its broadest sense, the term is used to include all forms of attestation by which a party signifies that he is bound in conscience to perform the act faithfully and truly. In a more restricted sense, it excludes all those forms of attestation or promise which are not accompanied by an imprecation.¹

An affirmation is a solemn religious asseveration in the nature of an oath.² In nearly all states, when an oath is required, and the party required to swear has religious scruples against swearing, affirmations are permitted. The statute requiring the administration of an oath is deemed complied with by an affirmation in judicial form.³

An affidavit is a statement or declaration reduced to writing, and sworn or affirmed to before some officer who has authority

¹ Cyc. Law Dict. p. 643.

An oath is a solemn appeal to the Supreme Being, in attestation of the truth of some statement, and an outward pledge that one's testimony is given under an immediate sense of responsibility to God. *State v. Jones*, 28 Idaho 428, 154 Pac. 378.

An oath is a solemn adjuration to God to punish the affiant if he swears falsely. The sanction of the oath is a belief that the Supreme Being will punish falsehood; and whether that punishment is administered by remorse of conscience or in any other

mode in this world, or is reserved for the future state of being, cannot affect that question as the sum of the matter is a belief that God is the avenger of falsehood. *Goolsby v. State*, — Ala. App. —, 86 So. 137.

An oath is defined by statute as every mode of attesting the truth of that which is stated, which is authorized by law. *Town of Checotah v. Town of Eufaula*, 31 Okla. 85, 119 Pac. 1014.

² Cyc. Law Dict.

³ See post, § 116 *et seq.* See also U. S. Rev. St. 1878, sec. 1.

to administer an oath. It is not synonymous with "oath" but includes the oath.⁴

An affidavit differs from a deposition in this, that in the latter the opposite party has an opportunity to cross-examine the witness, whereas an affidavit is always taken *ex parte*.⁵

§ 92. Who May Administer Oaths; Power of Notaries.

§ 93. —In General.—Usually, the statutes provide what officers are authorized to administer oaths, specifically naming them,⁶ and the statutory requisites in this regard should always be consulted.⁷ In the absence of express statutory authority, an officer cannot administer an oath to himself.⁸

At the common law, notaries public had no authority to administer oaths, and this power is an added one that must be conferred by statute.⁹ The power is not one of the incidents of the office, and cannot be presumed to exist.¹⁰ This rule is important for the reason that a notary in a foreign state or country, who certifies to administering an oath, must also append a certificate of his authority to administer such oath. Otherwise, if the paper is involved in litigation, the courts will presume the law of the foreign state to be like the common law, and as a consequence the notary will be held

⁴ Cyc. Law Dict. p. 36.

An affidavit is not only a written oath, but a statement of the things sworn to. *State v. Howard*, 91 Wash. 481, 158 Pac. 104.

An affidavit is a statement in writing declared to be true by the party who makes it and certified to have been sworn to before him by the officer who takes it. *Partridge v. Mechanics' Nat. Bank of Burlington*, 77 N. J. Eq. 208, 77 Atl. 410.

An affidavit is a written declaration under oath by a party before some person who has authority under the law to administer oaths, made without notice to the adverse party in a case. *Crenshaw v.*

Miller, 111 Fed. 450.

⁵ Cyc. Law Dict. p. 36. See also *Harris v. Lester*, 80 Ill. 307; *Partridge v. Mechanics' Nat. Bank of Burlington*, 77 N. J. Eq. 208, 77 Atl. 410.

⁶ See post, § 116 *et seq.*

⁷ See ante, § 16, where the improper administration of an oath resulted in a notary being a mere *de facto* officer.

⁸ *Phillips v. State*, 5 Ga. App. 597, 63 S. E. 667.

⁹ *Anderson v. Com. (Ky.)*, 117 S. W. 364; *Greeley v. Greeley*, 118 Me. 491, 107 Atl. 296; *Holbrook v. Libby*, 113 Me. 389, 94 Atl. 482, L. R. A. 1196A 1167.

¹⁰ *Keefer v. Mason*, 36 Ill. 406.

without authority to administer the oath.¹¹ In practically all the states and territories, the statutes authorize notaries to administer oaths, however,¹² and the power exists as a general rule.¹³ It has been said that the general presumption is that a notary can administer oaths, unless proof to the contrary is offered.¹⁴ Some of the statutes authorize the notaries to take depositions and do all other acts in relation to taking testimony, and to take acknowledgments and affidavits. The United States statutes confer no general authority to notaries to administer oaths nor as to the manner of administering.¹⁵ By the Illinois statute, a notary can administer oaths in all cases, and proof of his official character is not required, except in a county other than where the suit may be pending, as courts take judicial cognizance of all who are authorized to administer oaths within their county.¹⁶

A court of equity has power to direct that commissioners appointed under the provisions of a decree to appraise real estate and set off homestead may take the oath for the performance of their duties before any officer empowered by law to administer oaths generally, and notaries public are thus empowered.¹⁷

In order to properly administer oaths the notary must be qualified to act, and must possess those requisites of eligibility, which the statutes provide.¹⁸

§ 94. —Oaths Under United States Laws.—In all cases in which, under the laws of the United States, oaths or acknowl-

¹¹ *Holbrook v. Libby*, 113 Me. 389, 94 Atl. 482, L. R. A. 1916 A 1167.

¹² See ante, §§ 37-90.

English notaries always considered themselves authorized to administer oaths, and whatever doubt existed as to this power was set at rest by the statute of 5 & 6 Wm. IV, ch. 62, sec. 15. *Wood v. St. Paul City Ry. Co.*, 42 Minn. 411, 44 N. W. 308, 7 L. R. A. 149.

¹³ *Edwards v. McKay*, 73 Ill. 570; *Campbell v. State*, 43 Tex.

Cr. R. 602, 68 S. W. 513.

¹⁴ *Pinkham v. Cockell*, 77 Mich. 265, 43 N. W. 921; *Crone v. Angell*, 14 Mich. 340.

¹⁵ *U. S. v. Hall*, 131 U. S. 50, 33 L. Ed. 97.

¹⁶ *Dyer v. Flint*, 21 Ill. 80, 74 Am. Dec. 73; *Stout v. Slaterry*, 12 Ill. 162; *Rowley v. Berrian*, 12 Ill. 200.

¹⁷ *Dillman v. Will County Nat. Bank*, 138 Ill. 282, 27 N. E. 1090; *Id.* 139 Ill. 269, 28 N. E. 946; *Id.* 36 Ill. App. 272.

¹⁸ See ante, §§ 8-10, 16.

edgments may now be taken or made before any justice of the peace of any state or territory, or in the District of Columbia, they may hereafter be also taken or made by or before any notary public duly appointed in any state, district or territory, or any of the commissioners of the circuit courts, and, when certified under the hand and official seal of such notary or commissioner, shall have the same force and effect as if taken or made by or before such justice of the peace.¹⁹

§ 95. —United States Government Claims.—A notary public is authorized to administer oaths in claims against the government for back pay, pensions or bounty cases.²⁰

§ 96. —Adverse Claimants to United States Mineral Lands.—An adverse claimant to mineral lands, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before any notary public of such state or territory. Applicants for mineral patents may make oath or affidavit required for proof of citizenship before the same.²¹

§ 97. —Applicants for United States Pensions.—A notary public is authorized to administer and certify any oath or affirmation relating to any pension or application therefor. In doing so, he must authenticate his act by his seal of office.²²

§ 98. —Oaths of National Bank Officers.—The oath of affirmation required by section 5211 of the Revised Statutes, verifying the returns made by national banks to the comptroller of the currency, when taken before a notary public properly authorized and commissioned by the state in which such notary resides and the bank is located, or any other officer having an official seal, authorized in such state to administer oaths, shall be a sufficient verification as contemplated by said section 5211, provided, that the officer administering the oath is not an officer of the bank.²³

§ 99. Disqualification Preventing Notary from Acting.—As has been noted, notaries may be disqualified from acting in

¹⁹ U. S. Rev. St. 1878, sec. 1778.

²⁰ U. S. Rev. St. Supp. p. 762.

²¹ U. S. Rev. St. Supp. p. 338.

²² U. S. Rev. St. Supp. vol. 2, p. 50.

²³ U. S. Rev. St. Supp. vol. 1, p. 318.

transactions in which they are interested,²⁴ but in respect to the administration of oaths, a distinction seems to exist between such administration and the taking of an acknowledgment. It has been held that a cashier of a bank is not disqualified from taking an affidavit in an attachment suit, brought to collect a debt due the bank.²⁵ A notary who is superintendent of the special assessment department of a city is not disqualified from administering an oath to any person.²⁶ The oath may be administered to a fellow commissioner, for filing and use in the proceeding.²⁷ Also a notary is not disqualified from administering an oath to, and attesting the affidavit of, his father.²⁸

In a large number of states, attorneys who are notaries are prohibited from administering oaths to their clients, or taking their affidavits, in respect to the cases pending in court,²⁹ and in some states the practice is not favored,³⁰ the rule being one of judicial policy, which may be waived by the court.³¹ In some cases the prohibition exists because of statutory provisions.³² In other states, there is no such prohibition,³³

²⁴ Ante, § 21.

²⁵ First Nat. Bank of Broadway v. Coates, 74 W. Va. 112, 81 S. E. 844.

²⁶ McChesney v. City of Chicago, 159 Ill. 223, 42 N. E. 894.

²⁷ Peck v. People, 153 Ill. 454, 39 N. E. 117.

²⁸ Kirkland v. Ferris, 145 Ga. 93, 88 S. E. 680.

²⁹ Yeogley v. Webb, 86 Ind. 424; Maroosis v. Catalano, 98 Neb. 284, 152 N. W. 559; Leavitt & Milroy Co. v. Rosenberg Bros. & Co., 83 Ohio St. 230, 93 N. E. 904.

³⁰ Savage v. Parker, 53 Fla. 1002, 43 So. 507; Phillips v. Phillips, 185 Ill. 629, 57 N. E. 796; Hollenbeck v. Detrick, 162 Ill. 392, 44 N. E. 732; Linek v. City of Litchfield, 141 Ill. 469, 31 N. E. 123; City of Chicago v. Bisso, 204 Ill. App. 162; City of Chicago v. Simonetti, 203 Ill. App. 279; City

of Chicago v. Boller, 203 Ill. App. 281; In re Ungaro's Will, 88 N. J. Eq. 25, 102 Atl. 244; Shanholtzer v. Thompson, 24 Okla. 198, 103 Pac. 595, 138 Am. St. Rep. 877.

³¹ In re Ungaro's Will, 88 N. J. Eq. 25, 102 Atl. 244.

An affidavit taken before a notary who is attorney for a party is voidable, being subject to amendment. Shanholtzer v. Thompson, 24 Okla. 198, 103 Pac. 595, 138 Am. St. Rep. 877.

³² Comp. Laws 1897, sec. 2640; Timm v. Cass Circuit Judge, 192 Mich. 508, 158 N. W. 1028.

³³ Reavis v. Cowell, 56 Cal. 588; Schoen v. Sunderland, 39 Kan. 758, 18 Pac. 913; McDonald v. Willis, 143 Mass. 452, 9 N. E. 835; Young v. Young, 18 Minn. 90 (Gil. 72); Mossberger v. Mossberger, 202 Mo. App. 271, 215 S. W. 760; Forest Oil Co. v.

and it has been held that however improper and unprofessional it may be for attorneys in a case pending, or about to begin, to administer an oath to an affidavit, sworn to by his client in such suit, there is nothing in the law that forbids it.³⁴ In states where attorneys are prohibited from acting, the rule usually applies to the attorney of record in the case. The prohibition has been held not to extend to a wife of an attorney,³⁵ or to another attorney who is employed as clerk in the office of the attorney of record in the case.³⁶ Also, the objection does not extend to preliminary matters, and an attorney may administer an oath to his client on an affidavit to be filed in the suit.³⁷ Where the record does not disclose that the acting attorney and the notary signing the affidavit are one and the same, the identity of the two men should not be inferred from the identity of names.³⁸ An attorney having acted for a party in a justice court is not precluded from acting as notary by taking the parties' oath, in subsequent matters.³⁹

§ 100. Manner of Administration of Oath; Sufficiency in General.—The purpose of an oath is to secure the truth, and hence any form which is calculated to appeal to the conscience of the person to whom it is administered, and by which he signifies that his conscience is bound, is sufficient.⁴⁰ Usually the statutes specifically state the form of words to be used, and the person sworn is required to raise his right hand, or place such hand on the Holy Bible, when the words are repeated by the officer administering the oath. The affiant then signifies his acceptance of the oath by replying in the affirmative.⁴¹ As has been noted from the definitions of oaths, there is a solemn adjuration to God, an appeal to the Supreme

Wilson, — Tex. Civ. App. —, 178 S. W. 626. But see Garza v. State, 65 Tex. Cr. R. 476, 145 S. W. 590 (where an affidavit of witness on a motion for new trial was held illegal).

³⁴ Evans v. Schriver Laundry Co., 57 Ill. App. 150.

³⁵ Timm v. Cass Circuit Judge, 192 Mich. 508, 158 N. W. 1028.

³⁶ MacKenzie v. MacKenzie, 238

Ill. 616, 87 N. E. 848.

³⁷ Evans v. Schriver Laundry Co., 57 Ill. App. 150.

³⁸ Bradley v. Claudon, 45 Ill. App. 326.

³⁹ Lynch Co. v. Wayne Circuit Judge, 129 Mich. 110, 88 N. W. 387.

⁴⁰ State v. Hulsman, 147 Iowa 572, 126 N. W. 700.

⁴¹ See post, § 116 *et seq.*

Being, by which the conscience of the affiant is bound. The effect is necessarily based on the affiant's belief in God. A person who affirms such belief, is a good witness.⁴² Formerly one having no religion, believing in no God, and not accountable here or hereafter, could not become a witness.⁴³ The difference in form permitted is based on the beliefs of the person who is sworn. Oaths are administered in the manner most binding on the conscience of the individual, and the statutes frequently state that such manner of administration must be employed. Oaths taken by the uplifted hand only, are valid.⁴⁴ If the affiant has conscientious objections to swearing in the usual manner, the affirmation is permitted, whereby the person swears to the truth "under the pains and penalties of perjury."⁴⁵

To make a valid oath, for the falsity of which perjury will lie, there must be in some form, in the presence of an officer authorized to administer it, an unequivocal and present act, by which the affiant consciously takes upon himself the obligations of an oath. The delivery of an affidavit to an officer, signed, is not such an act.⁴⁶ An officer who disregards the statutory form of oath, and has affiants sign affidavits, merely asking them, "Is that true?" does not perform his duty.⁴⁷ Too much importance cannot be placed upon this necessity of form, and the strict adherence to the statutory requisites. In the large American cities, and especially in governmental and municipal offices, there has prevailed, and does prevail, a tendency to disregard form and ceremony when official business is involved. This cannot be allowed to the extent of doing away with the statutes especially in so far as they

⁴² Noble v. People, Breese (Ill.) 54.

⁴³ Central Military Tract R. Co. v. Rockafellow, 17 Ill. 541.

⁴⁴ Gill v. Caldwell, Breese (Ill.) 53.

An oath taken with the uplifted hand, and swearing by the ever-living God, is effectual. If any objection, it should be made before, not after, the verdict.

McKinney v. People, 2 Gilm. (Ill.) 540, 43 Am. Dec. 65.

⁴⁵ See post, § 116 *et seq.*

⁴⁶ O'Reilly v. People, 86 N. Y. 154, 10 Abb. N. C. 53, 40 Am. Rep. 525.

⁴⁷ Bookman v. City of New York, 200 N. Y. 53, 93 N. E. 190 (where a notary was deprived of his fees for dereliction of duty in this respect).

pertain to the administration of oaths upon which the crime of perjury may be based.⁴⁸

If the oath is properly administered, it cannot be evaded because of some slight deviation from the form used, or because of some irregularity. The mere failure to raise the hand has been held an irregularity which did not invalidate the oath.⁴⁹ and where a question arose as to whether the officer had repeated the words "So help you God," which was disputed, the omission of such words was held immaterial.⁵⁰

§ 101. Administration of Oath Over Telephone.—From the manner of administering oaths, it is essential that the officer see and know the person who takes the oath. There must be some form and solemnity, and accordingly an oath cannot be administered, or an affidavit taken over the telephone. Long-distance swearing is not permitted. Telephonic affidavits are unknown to the law.⁵¹

The reasons for this rule are self-apparent. If the statutory requirement is that the oath be administered in the form most binding on the conscience of the affiant, and in the personal presence of the officer, the statute is not complied with even though the officer knows the voice of the affiant.⁵² If such oaths are permitted, opportunities are afforded for fraud, imposition and evasion of perjury. A host of questions may arise as to the validity of the affidavit. If the officer or notary takes the oath over the telephone, and later the paper involved, or some other paper, is presented for his jurat, the officer cannot know that it is the identical paper mentioned except by hearsay. If a telephonic oath is attempted to be taken, a

⁴⁸ *Bookman v. City of New York*, 200 N. Y. 53, 93 N. E. 190.

⁴⁹ *State v. Day*, 108 Minn. 121, 121 N. W. 611.

⁵⁰ *State v. Hulsman*, 147 Iowa 572, 126 N. W. 700.

⁵¹ *Carnes v. Carnes*, 138 Ga. 1, 74 S. E. 785; *Sullivan v. First Nat. Bank of Flatonia*, 37 Tex. Civ. App. 228, 83 S. W. 421.

In *Fairbanks, Morse & Co. v. Getchell*, 13 Cal. App. 458, 110 Pac. 331, the contention was made

that the oath of a person was void because taken over the telephone. The validity of such an oath was not decided, however, as the court held that even if an oath might be permitted to be administered over the telephone, the notary was without power to act outside of his county.

⁵² *Sullivan v. First Nat. Bank of Flatonia*, 37 Tex. Civ. App. 228, 83 S. W. 421.

question arises as to when the oath was administered, whether at the time of the conversation or when the paper was signed. Another question arises as to the place of administration, whether it is the place where the affiant is, or where the officer is. If the officer and affiant are in different counties, which county will have jurisdiction of the perjury? Endless confusion would result, and tempting chances for immunity from identification or discovery would be held forth, if telephonic oaths were permitted.⁵³

§ 102. Form of Oath of United States Government Officers.—Every person elected or appointed to any office of honor or profit, either in the civil, military or naval service, excepting the President and the persons embraced by the section following, shall, before entering upon the duties of such office, and before being entitled to any part of the salary or other emoluments thereof, take and subscribe the following oath: "I, A B, do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought, nor accepted, nor attempted to exercise the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God."⁵⁴

Whenever any person who is not rendered ineligible to office by the provisions of the fourteenth amendment to the con-

⁵³ *Carnes v. Carnes*, 138 Ga. 1, Civ. App. 228, 83 S. W. 421.
⁷⁴ S. E. 785; *Sullivan v. First Nat. Bank of Flatonia*, 37 Tex. ⁵⁴ U. S. Rev. St. 1878, sec. 1756.

stitution is elected or appointed to any office of honor or trust under the government of the United States, and is not able, on account of his participation in the late rebellion, to take the oath prescribed in the preceding section, he shall, before entering upon the duties of his office, take and subscribe in lieu of that oath the following oath: "I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."⁵⁵ The oath of office required by either of the two preceding sections may be taken before any officer who is authorized by the laws of the United States, or by the local municipal law, to administer oaths, in the state, territory or district where such oath may be administered.⁵⁶ The oath of office taken by any person pursuant to the requirements of section 1756, or of section 1757, shall be delivered in by him to be preserved among the files of the House of Congress, department, or court to which the office in respect to which the oath is made may appertain.⁵⁷

§ 103. **Oaths of State and Other Officers.**—Every member of a state legislature, and every executive and judicial officer of a state, shall, before he proceeds to execute the duties of his office, take an oath in the following form, to wit: "I, A B, do solemnly swear that I will support the Constitution of the United States."⁵⁸ Such oath may be administered by any person who, by the law of the state, is authorized to administer the oath of office; and the person so administering such oath shall cause a record or certificate thereof to be made in the same manner as, by the law of the state, he is directed to record or certify the oath of office.⁵⁹ The constitution expressly leaves it in the discretion of the legislature to exempt "inferior officers" from taking the prescribed oath of office.

55 U. S. Rev. St. 1878, secs. 1757, 1758, 1759.

56 Ibid.

57 Ibid.

58 U. S. Rev. St. 1878, secs. 1836, 1837.

59 Ibid.

Township treasurers, school trustees, treasurers and directors are inferior officers.⁶⁰

§ 104. Oaths of Witnesses.—It is an established rule that all witnesses who are examined upon a trial, civil or criminal, must give their evidence under the sanction of an oath, or some affirmation substituted in lieu thereof. If any person called as a witness refuses or is unwilling to be sworn from alleged conscientious motives, he will be allowed to make solemn religious affirmation, involving like appeal to God in the truth of his testimony, in mode which he shall declare to be binding on his conscience. All witnesses are to be sworn according to the peculiar ceremonies of their religion, or in such manner as they may deem binding on their own consciences; and if the witness be not of Christian religion, the court will inquire as to the form in which an oath is administered in his own country or among those of his own faith, and will impose it in that form.⁶¹

§ 105. Administration of Oaths by United States Government Employees; Fees.—No officer, clerk or employee of any executive department who is also a notary public or other officer authorized to administer oaths, can charge or receive any fee or compensation for administering oaths of office to employees of such department required to be taken on appointment or promotion therein.⁶²

§ 106. Oaths of Corporations.—A corporation cannot take an oath.⁶³ Affidavits in behalf of a corporation are executed by the officers,⁶⁴ or by agents or attorneys.⁶⁵

§ 107. Necessity and Propriety of Affidavits.—Affidavits are principally required in legal proceedings, but are also used in business affairs to a large extent. "It is a matter of

⁶⁰ School Directors of Dist. No. 13 v. People, 79 Ill. 511.

⁶¹ Bradner's Ev. (2nd Ed.), p. 134.

⁶² U. S. Rev. St. Supp., vol. 1, p. 791.

⁶³ Fletcher's Cyc. Corp. sec. 854.

⁶⁴ Fletcher's Cyc. Corp. secs. 2061, 2069, 2086, 2094.

⁶⁵ Under Rev. St. arts. 4928-4964, authorizing affidavits by agents or attorneys whenever necessary corporations may make affidavits by their agents or attorneys. *Simmons v. Campbell*, — Tex. Civ. App. —, 213 S. W. 338.

common knowledge that from time immemorial, affidavits have been used in business, though not required by law, whenever a solemn, formal asseveration upon which others might rely was intended. Familiar examples are affidavits touching titles to property, affidavits of financial condition for the purpose of obtaining credit, affidavits touching the pedigree of animals, sworn bank statements, and statements of the financial condition of other corporations.''⁶⁶ It is in this latter class of affidavits that notaries are principally interested, as lawyers are usually employed when affidavits are required in legal proceedings.

§ 108. Affidavits Required in Examination of Abstracts of Title.—In the examination of abstracts of title, notaries are frequently called upon to prepare or take the affidavits of individuals respecting matters raised by the examination of title. Such affidavits may concern court proceedings, but usually are the *ex parte* sworn statements of individuals respecting questions as to deaths, marriages, births, etc., concerning which no other or better evidence can be found. Family records are not universal, and even in states where records are kept of births, deaths and marriages, the requisite information cannot always be obtained. In such cases, resort must be had to the next best and most available testimony, which is usually supplied by the affidavit of some person setting forth his knowledge of the matters under inquiry. Such affidavits, though possessing no legal efficacy, should yet be attended with the same solemnities and formalities that are required in affidavits for use in court.⁶⁷

§ 109. Sufficiency of Affidavits.—A test of the sufficiency of an affidavit is whether it is so clear and certain that an indictment for perjury may be sustained on it, if false.⁶⁸ The language used should be clear and unmistakable. If doubtful or ambiguous expressions are used, the court may assume

⁶⁶ State v. Howard, 91 Wash. 481, 158 Pac. 104.

⁶⁷ Warvelle on Abstracts (4th. Ed.), sec. 339.

⁶⁸ Sellers v. State, 162 Ala. 35, 50 So. 340; Gee Chong Pong v.

Harris, 38 Cal. App. 214, 175 Pac. 806; Jotter v. Marvin, 67 Colo. 548, 189 Pac. 19; Clarke v. Wayne Circuit Judge, 198 Mich. 33, 159 N. W. 387.

subsequently that the affiant wished to evade the stronger expressions, and the language will be construed against the person who made the affidavit.⁶⁹ Also, the essential facts should be fully and completely stated. In preparing affidavits as to facts required in the examination of abstracts of title, it is frequently customary for the affiant to state that a certain person is an "unmarried man." This is an unsatisfactory manner of stating a fact of domestic condition, as it raises an inquiry as to whether the person was a divorcee, with possible dower rights in his divorced spouse. The information should be more definitely stated.⁷⁰ If an affidavit showing compliance with some statutory requisite is required, it should be carefully drawn to show such compliance. A certificate stating that notice "has been published five times in, etc.," is insufficient when the statute provides that the notice shall be published at least "five successive days."⁷¹ But, an affidavit to a claim for a mechanic's lien, stating that the amount claimed was due and payable from a date named in an exhibit, which was stated to be a just and true statement of the account due the petitioner, is a sufficient verification.⁷²

Ordinarily, it is not necessary to state in the affidavit that the declaration is under oath, if the oath is in fact administered. Such fact is shown by the officer's certificate or jurat.⁷³

§ 110. Statements on Information and Belief.—An affiant's knowledge of matters stated in an affidavit must frequently of necessity rest upon information derived from others, and, when this is so, it is generally sufficient to aver, upon information and belief, that such matters are true. In such cases belief is considered an absolute term, and perjury may be assigned on such affidavit if it is false.⁷⁴ The distinction between what facts are known by an affiant of his own knowledge and what are known on information and belief is a

⁶⁹ Mearns v. Harris, 45 App. Cas. (D. C.) 536.

⁷⁰ Warvelle on Abstracts (4th Ed.), sec. 339.

⁷¹ Toberg v. City of Chicago, 164 Ill. 572, 45 N. E. 1010; Evans v. People, 139 Ill. 552, 28 N. E. 1111.

⁷² Moore v. Parish, 163 Ill. 93, 45 N. E. 573.

⁷³ Miller v. Caraker, 9 Ga. App. 255, 71 S. E. 9.

⁷⁴ Jotter v. Marvin, 67 Colo. 548, 189 Pac. 19.

rather technical one, and invades the field of evidence in the trial of cases and suits at law. Notaries should, however, be familiar with the matter, and its importance tends to further emphasize the importance of a notary's duties. The matter can be illustrated by the fact that an affiant, and in fact every person, knows his own post office address of his own knowledge, but he cannot know the post office address of another, except through information. He may write to and receive letters by mail from a person, or see the postman delivering letters to a person at a particular place, or hear such person or another declare what his post office address is, or learn the facts in some other way, but, in any event, his knowledge must rest upon information and belief.⁷⁵

When a showing is required as to facts which are necessarily matters of information and belief, the affidavit should state the ultimate facts clearly and positively.⁷⁶ The affiant must swear peremptorily to the fact,⁷⁷ and to aver that the facts exist as "affiant believes" proves nothing.⁷⁸ A deposition cannot be objected to because sworn to on information and belief when the answers are direct and positive statements, and are not opinions or statements based on hearsay.⁷⁹

§ 111. **Venue, or Caption.**—The caption is the heading of a legal instrument, in which is shown when, where, and by what authority it was taken, found, or executed.⁸⁰ The term is principally used in referring to indictments, but may be a better term to express the heading of an affidavit than the word "venue." By a reference to the forms, it will be noted that practically all certificates of notaries are entitled with the words "State of....., County of....." Such venue is ample evidence of the place where the oath was

⁷⁵ *Jotter v. Marvin*, 67 Colo. 548, 189 Pac. 19.

⁷⁶ *Jotter v. Marvin*, 67 Colo. 548, 189 Pac. 19; *MacKenzie v. MacKenzie*, 238 Ill. 616, 87 N. E. 848; *Shanholtzer v. Thompson*, 24 Okla. 198, 103 Pac. 595, 138 Am. St. Rep. 877; *Warvelle on Abstracts* (4th Ed.), sec. 340.

⁷⁷ *Heffron v. Rice*, 40 Ill. App. 244; *Leigh v. Green*, 64 Neb. 533, 90 N. W. 255, 101 Am. St. Rep. 592.

⁷⁸ *Warvelle on Abstracts* (4th Ed.), sec. 340.

⁷⁹ *Senter v. Teague*, — Tex. Civ. App. —, 164 S. W. 1045.

⁸⁰ *Cyc. Law Dict.*

administered.⁸¹ The venue is generally regarded as a material fact in all affidavits,⁸² yet courts have exhibited great leniency in this particular. It has been held that, notwithstanding the instrument is without venue yet if it is subscribed by an officer duly empowered to administer and certify oaths, it will be presumed that the oath was taken only in the county where the officer was authorized to act.⁸³ This presumption has been held to obtain even where the venue or caption of the affidavit stated a different county from that shown by the notary's signature.⁸⁴ The validity of the affidavit cannot depend on the caption or venue. Without any caption whatever, the instrument may nevertheless be an affidavit.⁸⁵ Where the certificate of publication of the delinquent tax list literally follows the statute, no venue need be attached either to the certificate or the oath.⁸⁶

The courts' leniency in regard to the caption of affidavits should not encourage notaries to omit such requisite, however, and in fact all courts do not exhibit the same leniency. Thus an affidavit entitled with the venue of one county, and signed by a notary of another county, has been held void. The affidavit should show on its face that it was taken within the jurisdiction of the officer who certifies.⁸⁷

§ 112. Signature of Affiant.—It has been held that a paper, the truth of the contents of which has been sworn to, but which has not been signed by the affiant, is not an affidavit.⁸⁸ Other courts have held that the signing by the affiant is not necessary,⁸⁹ that if a person swears to the affidavit, it makes

⁸¹ *Hansford v. Snyder*, 63 W. Va. 198, 59 S. E. 975.

Unless authorized by statute, an officer can perform no official act outside of and beyond the territorial limits in which he is authorized and required to act. *Van Dusen v. People*, 78 Ill. 645.

⁸² *Warvelle on Abstracts* (4th Ed.), sec. 340.

⁸³ *Gibson v. Austin*, 23 Colo. App. 220, 128 Pac. 859; *Hambel v. Lowry*, 264 Mo. 168, 174 S. W. 405; *Meldrum v. United States*,

80 C. C. A. 545, 151 Fed. 177, 10 Ann. Cas. 324; *Warvelle on Abstracts* (4th Ed.), sec. 340.

⁸⁴ *Barber v. DeFord*, 169 Iowa 692, 150 N. W. 86.

⁸⁵ *Harris v. Lester*, 80 Ill. 307.

⁸⁶ *Bass v. People*, 159 Ill. 207, 42 N. E. 880.

⁸⁷ *Robinson v. Cooper*, 62 N. Y. Misc. 517, 115 N. Y. Supp. 599.

⁸⁸ *Meadows v. Alexander*, 1 Ga. App. 40, 57 S. E. 901.

⁸⁹ *Hotaling & Co. v. Brogan*, 12 Cal. App. 500, 107 Pac. 711.

no difference if he signs it, or authorizes some one else to sign for him, or approves and adopts the signing. The vital thing is the swearing.⁹⁰ In view of the necessity of form and ceremony, however, it would seem that the better practice is to have the affiant sign his written declaration, and notaries in general would do well to adhere to this requisite. A person who appends his signature to his sworn statement is more disposed to carefully consider his statements, and their truth, and cannot subsequently evade the affidavit.

§ 113. **Jurat.**—The jurat is that part of an affidavit where the officer states that the same was sworn to before him.⁹¹ The jurat is merely evidence that the oath was duly administered, and, in the absence of a jurat, such fact may be proved otherwise.⁹² It has been held not a necessary part of the affidavit.⁹³ In one of these cases, however, the statute prescribed no form of jurat, and it was held that the statutory certificate for the authentication of depositions could not be used for ordinary affidavits.⁹⁴ Usually the form of the jurat is fixed by statute, and in general practice all affidavits conclude with the jurat. A presumption exists in favor of a properly executed jurat. This presumption is not conclusive though, as the fact whether an affiant was sworn or not may be inquired into, and the statement in the jurat may be shown to be false.⁹⁵ As has been noted, notaries who certify falsely to affidavits are subject to severe penalties, and may be convicted of crime.⁹⁶

Looseness in the form of the jurat or verification of instruments should not be encouraged. In general, the courts do not favor technical objections based on irregularities in affidavits, but such irregularities give rise to disputed questions if

⁹⁰ State v. Burtenshaw, 25 Idaho 607, 138 Pac. 1105.

⁹¹ Cyc. Law Dict.

⁹² James v. Logan, 82 Kan. 285, 108 Pac. 81, 136 Am. St. Rep. 105. See also Cohen v. Bernstein, 170 Ill. App. 113.

⁹³ Cohen v. Bernstein, 170 Ill. App. 113.

⁹⁴ James v. Logan, 82 Kan. 285, 108 Pac. 81, 136 Am. St. Rep. 105.

⁹⁵ Miller v. Caraker, 9 Ga. App. 255, 71 S. E. 9; Green v. Rhodes, 8 Ga. App. 301, 68 S. E. 1090.

Certificate of officer is prima facie proof of administration of oath, but as to which parol evidence is admissible. Miller v. Caraker, 9 Ga. App. 255, 71 S. E. 9.

⁹⁶ Ante, §§ 31-34.

the instrument is involved in litigation, and if the affidavit is correctly prepared and executed, the objections may be avoided. It is a universal rule in all courts that any irregularity in a jurat may, unless expressly waived, be objected to in any stage of a cause.⁹⁷

The statement of the personal appearance of the affiant before the officer administering the oath varies somewhat in the different states, and usually slight irregularities in the wording do not invalidate the affidavit. Thus, the omission of the words "before me" has been held immaterial, when the affidavit stated that the person "then personally appeared," as it was apparent that the person sworn appeared before the notary.⁹⁸

It is essential to the validity of an affidavit that the name of the officer who takes the oath be disclosed, either in the recitals in the body of the affidavit, or by the signature to the jurat.⁹⁹ The official character of the officer should also appear. If such designation is not added after the signature, but appears otherwise in the papers, the omission is not fatal.¹ There are exceptions to this rule as to the necessity of a recital of official character. In New Jersey, the statute provides that the recital of official character shall be sufficient proof that the person is the officer recited, and it has been held that this merely provides a method of proof, and that consequently the recital is not necessary to the validity of the affidavit.² The failure to add the date of expiration of the notary's commission has been held a mere irregularity, not invalidating an affidavit.³

⁹⁷ *Heffron v. Rice*, 40 Ill. App. 244; *Brabrook Tailoring Co. v. Belding Bros.*, 40 Ill. App. 326.

⁹⁸ *Clement v. Bullens*, 159 Mass. 193, 34 N. E. 173.

⁹⁹ *Sellers v. State*, 162 Ala. 35, 50 So. 340.

¹ *Fountain Creek Drain. Dist. No. 1 v. Smith*, 265 Ill. 138, 106 N. E. 494.

² *Dilts v. Jersey City Board of Excise Comr's*, 80 N. J. L. 475, 79 Atl. 315.

An affidavit annexed to a chat-

tel mortgage which was taken in Pennsylvania before a notary public whose jurat failed to state that he was a notary public of that state as required by statute, *held*, that it did have annexed an affidavit within the meaning of the law and was not void as to creditors. *Magowan v. Baird*, 53 N. J. Eq. 656, 33 Atl. 1054.

³ *Brown Mfg. Co. v. Gilpin*, 120 Mo. App. 130, 96 S. W. 669.

See ante, § 24.

The date of the jurat should be carefully stated. Errors may occur in this respect, of course, but should be avoided. In one case a jurat was dated January 3, 1917, when it should have been 1918, and the affidavit was attacked as invalid. The court held, however, that the error was not misleading, and further stated that the objection was frivolous.⁴

In many jurisdictions the signature of the officer is not essential to the jurat, it being held not a part of the affidavit, and if not signed originally, it may be signed afterwards.⁵ In other states, the signature is necessary.⁶ Some courts exhibit leniency, and will permit the omission of the signature to be cured by amendment.⁷

Usually the official seal must be added,⁸ although some affidavits have been held sufficient even though the seal was omitted,⁹ as where the official character of the notary otherwise appeared,¹⁰ or where there was no direct attack on the affidavit because of the absence of the seal.¹¹ In some cases, an omission in this respect has been cured, when the affidavit was involved in litigation, by permitting an amendment supplying the defect.¹² The seal is not part of the oath, but its effect is to afford prima facie evidence of the official character of the officer using it, and of the regularity of the certifica-

⁴ Herndon v. Wakefield-Moore Realty Co., 143 La. 724, 79 So. 318.

⁵ See Miller v. Caraker, 9 Ga. App. 255, 71 S. E. 9.

⁶ Miller v. Caraker, 9 Ga. App. 255, 71 S. E. 9; Deputy v. Dollarhide, 42 Ind. App. 554, 86 N. E. 344.

⁷ People v. Block, 281 Ill. 227, 117 N. E. 1000.

⁸ Town of Knox v. Golding, 46 Ind. App. 634, 91 N. E. 857, 92 N. E. 986; Deputy v. Dollarhide, 42 Ind. App. 554, 86 N. E. 344; Cassidy v. Souster, 115 Minn. 191, 132 N. W. 292.

The failure to affix the seal renders the instrument void, as the statute declares acts not so

attested void. Town of Knox v. Golding, 46 Ind. App. 634, 91 N. E. 857, 92 N. E. 986.

⁹ Clement v. Bullens, 159 Mass. 193, 34 N. E. 173. See Dickinson v. Huntington, 109 C. C. A. 523, 185 Fed. 703.

¹⁰ Earle v. National Metallurgic Co., 77 N. J. Eq. 17, 76 Atl. 555 (where the affidavit was taken before a notary with the designation "Notary Public, N. Y. Co.').

¹¹ Dickinson v. Huntington, 109 C. C. A. 523, 185 Fed. 703 (W. Va. rule).

¹² People v. Block, 281 Ill. 227, 117 N. E. 1000; Ames Evening Times v. Ames Weekly Tribune, 183 Iowa 1188, 168 N. W. 106.

tion.¹³ By applying the general rule that officers are presumed to act within their jurisdiction, the omission of the seal, like that of the venue, is not fatal.¹⁴ It is a mere irregularity, not affecting the validity of the oath.¹⁵ In general, notaries should affix their seals, however, and the act should be performed carefully. In one case the impression was so faint that a disputed question of fact arose as to whether the seal was affixed. The evidence was held to sustain a finding that the seal had been added, but this was in a jurisdiction where notaries were required to authenticate their acts, and accordingly there was a presumption that the act had been performed.¹⁶ If the official seal is attached, the letters "N. P." have been held sufficient to show the character of the officer as notary.¹⁷ Where the county for which the notary was appointed was omitted in the jurat, but the seal indicated such county, the affidavit was held good.¹⁸

§ 114. Certificate of Authority to Administer Oaths.—In order to make an affidavit valid and effectual, it must be sworn to before an officer who has authority to administer oaths,¹⁹ and this fact must usually appear in the officer's certificate, in order that it may be prima facie evidence of the fact.²⁰ Because notaries had no power to administer oaths at the common law, an affidavit made before a notary of one state is usually of no effect in another state, unless it is accompanied by a certificate from some proper officer showing

¹³ Ames Evening Times v. Ames Weekly Tribune, 183 Iowa 1188, 168 N. W. 106.

¹⁴ Meldrum v. United States, 80 C. C. A. 545, 151 Fed. 177, 10 Ann. Cas. 324.

¹⁵ Reclamation Dist. No. 730 v. Snowball, 160 Cal. 695, 117 Pac. 905, 118 Pac. 514.

¹⁶ Cassidy v. Souster, 115 Minn. 191, 132 N. W. 292.

¹⁷ Williams v. Lobban, 206 Mo. 399, 104 S. W. 58.

¹⁸ Bilby v. Hancock, 58 Tex. Civ. App. 365, 125 S. W. 370.

¹⁹ Van Dusen v. People, 78 Ill.

645; McDermaid v. Russell, 41 Ill. 489.

²⁰ Shockley v. Turnell, 114 Ga. 378, 40 S. E. 279; Smith v. Lyons, 80 Ill. 600.

It is only where the notary certifies under his official seal that he has authority to administer oaths under the statute of the state under which he holds his commission, that such certificate is prima facie evidence that he has such statutory authority. Wellington v. Wellington, 137 Ill. App. 394.

the notary's power. There must be proof of the authority of the foreign notary to act.²¹ The foreign notary's jurat and seal do not alone establish his authority to administer oaths.²² Affidavits sworn to before notaries public in Canada, which give no certificate of their authority to administer oaths in the dominion of Canada, are void.²³ Usually the statutes contain provisions as to such certificate of authority,²⁴ and because of the difference in the statutes, the decisions of the courts vary as to the requirement of a certificate of authority. In West Virginia, the signature of the notary alone is enough as to depositions.²⁵ But affidavits must be accompanied with a certificate authenticating the notary's signature, and his power to administer oaths.²⁶ A certificate of a clerk of court stating that the officer administering the oath was a notary at the time, that he was duly commissioned and qualified, and that his signature was genuine, was held a sufficient authentication in a late case, however, as the court would take judicial notice that the notary had authority to administer oaths.²⁷ Usually, however, the courts of one state will not take judicial notice of the appointment and term of the office

²¹ *Holbrook v. Libby*, 113 Me. 389, 94 Atl. 482, L. R. A. 1916 A 1167.

Courts of one state do not recognize the right of a notary of another state to take affidavits, unless the same are accompanied by the certificate of a clerk of a court of record. *Teutonia Loan & Building Co. v. Turrill*, 19 Ind. App. 469, 49 N. E. 852, 65 Am. St. Rep. 419. See *Behn v. Young & Co.*, 21 Ga. 207; *Mineral Point R. Co. v. Keep*, 22 Ill. 9, 74 Am. Dec. 124; *Connalley v. Wallace Co.*, 51 W. Va. 181, 41 S. E. 167.

²² *People v. Nelson*, 150 Ill. App. 595.

²³ *Ferris v. Commercial Nat. Bank*, 158 Ill. 237, 41 N. E. 1118.

²⁴ See post, § 116 *et seq.*

²⁵ *Bohn v. Zeigler*, 44 W. Va. 402, 29 S. E. 983.

²⁶ *Hill Clutch Co. v. Independent Steel Co. of America*, 74 W. Va. 353, 82 S. E. 223.

An affidavit for an attachment made before a foreign notary, but without a certificate from a clerk of court or other official, verifying the genuineness of the notary's signature and his authority to administer oaths as required by statute is bad but may be amended on leave of court. *Bohn v. Zeigler*, 44 W. Va. 402; 29 S. E. 983.

²⁷ *Appalachian Marble Co. v. Masonic Temple Ass'n*, 79 W. Va. 471, 91 S. E. 403.

of notaries in other states.²⁸ In some states the affidavit of a foreign notary with his seal attached is receivable in the courts without further authentication.²⁹

In Illinois, in attachment cases, the affidavit may be made before any officer authorized by the laws of the state to administer oaths. If in the county, a seal is not required, but it is required for outside the county or state.³⁰ The civil code of New York requires that, when an affidavit is taken in another state to be used in New York, there must be a certificate that such officer was authorized by the laws of his state to take and certify acknowledgments and proofs of deeds to be recorded in his state. A certificate taken in another state reciting that the officer is a notary public and as such is duly authorized by the laws of such state to take does not comply with the code of New York.³¹

A notary of another state is permitted to file, as an amendment to his original certificate, an additional certificate stating that he is authorized to administer oaths.³²

§ 115. Perjury.—Perjury at common law is the wilful and corrupt taking of a false oath in a judicial proceeding in regard to a matter material to the issues.³³ The crime of

²⁸ An affidavit of a notary of another state having no notarial seal attached nor any evidence of authority is insufficient. *Alabama Nat. Bank v. Chattanooga Door & Sash Co.*, 106 Ala. 663, 18 So. 74; *Chandler v. Hanna*, 73 Ala. 390; *Bradley v. Northern Bank*, 60 Ala. 252.

²⁹ *Singletary v. Watson*, 136 Ga. 241, 71 S. E. 162.

A notary public of another state must certify that he has power to administer oaths; it cannot be presumed. *Keefer v. Mason*, 36 Ill. 406. If no authority is shown, it will be treated as a nullity. When a seal is used, certificate is not required. *Harding v. Curtis*, 45 Ill. 252.

³⁰ *Rowley v. Berrian*, 12 Ill. 198.

³¹ *Stanton v. United States Pipe Line Co.*, 90 Hun. (N. Y.) 35, 35 N. Y. Supp. 629, 25 Civ. Proc. 180, 70 N. Y. St. Rep. 394. See also, *Wood v. St. Paul City Ry. Co.*, 42 Minn. 411, 44 N. W. 308, 7 L. R. A. 149; *Leavitt v. Williams*, 150 N. Y. Supp. 667; *Isman v. Wayburn*, 54 N. Y. Misc. 86, 104 N. Y. Supp. 491.

³² *Goldie v. McDonald*, 78 Ill. 606.

³³ *Cyc. Law Dict.; Com. v. Hinkle*, 177 Ky. 22, 197 S. W. 455.

The false testimony must be given wilfully, with criminal intent. *State v. Henry*, 118 Me. 495, 108 Atl. 49; *People v. Redmond*, 189 N. Y. App. Div. 96, 178 N. Y. Supp. 120.

perjury is variously defined by the statutes and has been extended in most states to include false swearing, as where an oath or affidavit is made in regard to matters not required by law in a judicial proceeding.³⁴ To "swear" means to state a fact or facts under the sanctity of an oath or affirmation, administered by some duly qualified officer, having authority to administer oaths.³⁵ A person may be guilty of perjury, if facts are stated by a deponent and known to be false, though stated on information and belief.³⁶ The statement of a person

Perjury consists in swearing falsely, wilfully and corruptly, contrary to the belief of the witness, not in swearing rashly and inconsiderately, according to his belief. *Cassady v. State*, — Okla. Cr. App. —, 197 Pac. 171.

34 False Swearing:

False swearing is perjury in the second degree. *State v. Howard*, 91 Wash. 481, 158 Pac. 104.

Rem. & Bal. Code, § 2353, denounces false swearing by a volunteer, not alone concerning matters where an oath is required or authorized by law but "concerning any matter whatsoever." *State v. Howard*, 91 Wash. 481, 158 Pac. 104.

False swearing is a statutory offense. The oath need not be taken in a judicial proceeding, or in a matter material to any point in question. It is only necessary that the false statement be made wilfully, with knowledge of falsity, on a subject to which the defendant might legally be sworn, before an officer authorized to administer an oath. *Com. v. Hinkle*, 177 Ky. 22, 197 S. W. 455. See also *Cassady v. State*, — Okla. Cr. App. —, 197 Pac. 171.

Perjury under United States Laws:

Every person who, after taking

an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than \$2,000, and by imprisonment, at hard labor, not more than five years; and shall moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. U. S. Rev. St. secs. 5392, 5393.

A charge of perjury may be based on a valid regulation of the general land office requiring an affidavit, if the oath is taken "before a competent tribunal, officer or person." *U. S. v. Morehead*, 243 U. S. 607, 61 L. Ed. 926.

³⁵ *State v. Dallagiovanna*, 69 Wash. 84, 124 Pac. 209, 40 L. R. A. (N. S.) 249.

³⁶ *Cassady v. State*, — Okla. Cr. App. —, 197 Pac. 171.

that he does or does not remember a given fact may subject a person to the punishment for perjury, if false.³⁷ Convictions of the crime may be had in some cases even though the affiant did not know his statement to be untrue.³⁸ The officer who administers an oath must have legal authority or the person taking it before him, however false, cannot be convicted of perjury.³⁹

Subornation of perjury is the procuring of another to commit legal perjury, whereby the other person, in consequence of the persuasion, takes the oath to which he has been incited.⁴⁰

STATUTORY REQUIREMENTS.

§ 116. **Alabama**—**AFFIDAVITS**—without the state, may be taken by commissioner, judge or clerk of federal court, judge of any court of record, or notary public, under their hands and official seal. **OATHS**—without the state, may be taken by notaries and officers authorized to take acknowledgments.

§ 117. **Alaska**—**AFFIDAVITS**—may be taken by every court, judge, clerk of a court, commissioner, justice of the peace and notary. The usual form is used unless the officer has a more solemn or obligatory form or witness may be sworn according to his peculiar religious ceremony. Witness may affirm.

§ 118. **Arizona**—**AFFIDAVIT**—may be taken in this state, by clerk of the district court or notary, within their counties. Out of the state, by any clerk of a court of record having a seal, any notary, or any commissioner of deeds appointed under the laws of this state. Out of the United States, by a notary, minister, commissioner, charge d'affaires of the United States, resident in and accredited to the country, consul-general, consul, vice consul, commercial agent, deputy consul, consular agent of the United States resident in the country.

³⁷ *People v. Redmond*, 189 N. Y. App. Div. 96, 178 N. Y. Supp. 120.

³⁸ Under a statute forbidding the issuance of a marriage license to a female under the age of eighteen without the consent of the father, and making it a misdemeanor to swear falsely in an affidavit that the person involved is of lawful age, a conviction may be had, although the affiant did

not know his statement to be untrue. *State v. Rupp*, 96 Kan. 446, 151 Pac. 1111, L. R. A. 1918 B 848.

³⁹ *Van Dusen v. People*, 78 Ill. 645.

⁴⁰ *Cyc. Law Dict.*

Every person who procures another to commit any perjury is guilty of subornation of perjury. U. S. Rev. St. secs. 5392, 5393.

§ 119. **Arkansas**—AFFIDAVITS—taken in this state, by a judge of the court, justice of the peace, notary or clerk of the court, mayor of city or incorporated town. Out of this state, by a commissioner appointed by the governor of this state to take depositions, before a judge of court, mayor, justice of the peace, notary, whose certificate shall be proof of the time and manner of its being made.

§ 120. **California**—AFFIDAVITS—may be taken in the state or outside by those authorized to take acknowledgments. See post, § 270, OATHS—form may be varied to suit the witness' religious belief. Witnesses may affirm.

§ 121. **Colorado**—AFFIDAVITS—taken in the state, by judges, county clerks, justices and clerks of court, justices of the peace, notaries, within their district. Out of the state, by a notary, clerk of a court of record, under their official seals, commissioners of deeds.

§ 122. **Connecticut**—AFFIDAVITS AND OATHS—taken by clerk of the senate, clerks of the house of representatives, chairman of committees of the general assembly, or its branches, during session, the governor, commissioner of school fund, judges and clerks of any court, justices of the peace, commissioners of the superior court, county commissioners, notaries, town clerks, commissioners to take acknowledgments appointed by the governor, commissioners of other states in it, also register of births when noting same. County superior court clerk will certify to the notaries' certificate. Party may affirm if objecting to oath, using the words, "Solemnly and sincerely affirm and declare," and instead of "so help you God," the words "upon the pains and penalties of perjury," shall be used.

§ 123. **Delaware**—AFFIDAVITS AND OATHS—taken by the chancellor, any judge, notary public, justice of the peace. Persons residing outside the state, may make oath or affidavits for use in this state before the same officers authorized by this state to take acknowledgments or to probate accounts. Usual form. Swearing upon the Holy Evangelists of Almighty God, by laying the right hand upon the Book and kissing it, or with the uplifted hand and swearing "by the everliving God, the searcher of all hearts, that," etc., as "I shall answer to God at the great day." Any one opposed to swearing may affirm.

§ 124. **District of Columbia**—AFFIDAVITS AND OATHS—may be administered by a chancellor, any judge, justice of the peace, or notary public.

§ 125. **Florida**—OATHS—can be administered in this state, by judges and clerks of the supreme and circuit courts, judges of probate, justices of the peace, and notaries public. In other states, any judge or clerk of a supreme, circuit or chancery court, or a notary public, or commissioner of deeds. In foreign countries, any judge of a court of last resort, a notary public, a minister, consul-general, charge d'affaires, or consul of the United States resident in that country, all to be

authenticated by their signature and official seal. An affirmation may be substituted for an oath. **FALSE AFFIDAVIT TO DEFRAUD INSURER**—any master or officer of a ship making or causing to be made a false affidavit or protest, or if any owner or other person concerned in such ship, vessel or goods procures a false affidavit or protest, he shall be imprisoned not exceeding ten years or by fine not exceeding \$5,000.

§ 126. **Georgia—AFFIDAVIT**—may be taken by any notary public, justice of the peace, judge of a court of law, or chancellor, commissioner, or master of any court of equity of the state or county where the oath is made or officer of such state or county authorized by the laws thereof to administer oaths. The official attestation of the officer shall be prima facie evidence of his official character and that he was so authorized. An affidavit made before any commissioner of this state, or any commissioner, or master, or chancellor of a court of equity, or judge of any court of the state where made, authorized to administer an oath, shall be sufficient verification.

§ 127. **Hawaiian Islands—AFFIDAVITS AND OATHS**—may be taken by courts, judges, or their clerks, notaries, commissioners. Affiants may affirm according to their religion.

§ 128. **Idaho—AFFIDAVITS**—in the state, may be taken before a judge or clerk of any court, justice of the peace, or notary public. Out of the state, to be used therein, before the judge or clerk of a court of record, having a seal, notary or commissioner. In a foreign country, an ambassador, minister, consul, vice consul or consular agent of the United States, or a court of record having a seal. A judge or court outside this state must have their certificate authenticated by the clerk of the court.

§ 129. **Illinois—WHO MAY ADMINISTER**—in the state, all courts, each judge, justice, master in chancery, and clerk thereof, and all justices of the peace, police magistrates and notaries public, secretary of state, in their districts, counties or jurisdictions. Out of the state, may be administered by any officer authorized by the laws of the state in which it is so administered, and if such officer have a seal, his certificate under his official seal shall be received as prima facie evidence without further proof of his authority to administer oaths. **FORM OF OATH**—the person swearing shall, with his hand uplifted, swear by the everliving God, and shall not be compelled to lay the hand on or kiss the Gospels. Party may affirm in the following form: "You do solemnly, sincerely and truly declare and affirm. Any person who shall so swear or affirm wilfully and falsely, in matter material to any issue or point in question, are subject to the like pains and penalties as are inflicted by law on persons convicted of wilful and corrupt perjury."

§ 130. **Indiana—WHO MAY ADMINISTER AFFIDAVITS AND OATH**—justices, judges, notaries, mayors, clerks of court, master com-

missioners, each in their own county or jurisdiction. Affidavits taken in another state to be certified to by the clerk of the circuit, district or common pleas county court, where the officer taking has jurisdiction, clerk's certificate to state under his hand and court seal that the officer taking is by the laws of said state duly empowered to administer oaths, affirmations and take affidavits. FALSELY ATTESTING—a notary public or other officer authorized to administer oaths who certifies that any person was sworn or affirmed before him to any affidavit or other instrument of writing when in fact such person was not so sworn or affirmed, shall be imprisoned in the state prison not more than three years nor less than one year, and fined not more than \$1,000 nor less than \$10. Same with acknowledgments, etc., they shall be imprisoned in the state prison from one to three years and fined from \$10 to \$1,000. Officer to explain the contents of the instrument to the party executing it before certifying to the acknowledgment under penalty of a fine of from \$5 to \$500 and imprisonment of from ten days to six months.

§ 131. Iowa—AFFIDAVIT—may be made within or without this state before any person authorized to administer oaths. Out of the state, a judge or clerk of a court of record, a notary, or a commissioner of deeds appointed by the governor of this state, are credible. A person desirous of obtaining the affidavit of another who is not willing to make it may apply to an officer competent to take depositions, and if the officer is satisfied that the object is legal and proper he shall issue a subpoena to bring the witness before him, and if he fails to make a full affidavit within his knowledge as required, the officer may take his deposition by question and answer in writing, which may be used instead of the affidavit. NOTICE—the officer may require notice to be given to any party interested and allow him to be present to cross-examine the witness. OATHS—who authorized to take—judges of the supreme, district, superior or police courts, clerks and deputy clerks of the same courts, county auditors and deputies, sheriffs and deputies where authorized by law to select commissioners and appraisers, impanel jurors for view or appraisal of property, or when directed as an official duty to have property appraised, or to take answers of garnishees, mayor and clerk of cities and towns, judges and clerks of election, township clerks, chairman of board of supervisors, surveyor or coroner in relation to duties imposed on either, members of any state institutions, of all commissions, boards or bodies created by law, all persons, referees or appraisers appointed by authority of law, the governor, secretary, auditor, and treasurer of state when pertaining to their official duties, justices of the peace within their counties, and notaries public within their counties or adjoining counties where they have filed their certificate of appointment. AFFIRMATION—can be made when person is opposed to swearing.

§ 132. Kansas—AFFIDAVITS AND OATHS—administered by justices of the peace in their counties, notaries public, judges of courts in

their jurisdictions, mayors of cities and towns, clerks of courts of record, county clerks and registers of deeds. HOW ADMINISTERED—by laying the right hand on the Holy Bible, or by the uplifted hand. FORM—must commence with, “you do solemnly swear,” etc., and conclude with “so help you God.” Or, “you do solemnly, sincerely and truly declare and affirm,” etc., “and this you do under the pains and penalties of perjury.” FALSIFYING—subjects the party to the pains and penalties of perjury. AFFIRMATION—can be taken where the party is conscientiously opposed to an oath. AFFIDAVITS—may be made in and out of the state by anyone authorized to take depositions and in the same way.

§ 133. **Kentucky—AFFIDAVITS AND OATHS**—administered in the state, by justices of the peace, notaries public, judge of a court, examiner, clerk of court, or master commissioner. Out of the state, by a commissioner appointed by the governor, a commissioner agreed upon by the parties, justice of the peace, judge of a court, mayor of a city, or notary public. OFFICERS—official oaths may be administered by any judge, notary, clerk of court, or justice of the peace, within his district or county. OATHS—include affirmations. AFFIDAVITS—to be subscribed by affiant, certificate of officer before whom made shall be written separately, following signature of affiant and shall be proof of time and manner of affidavit. Notary’s certificate must be signed, officially sealed and show date of expiration of commission.

§ 134. **Louisiana—AFFIDAVITS AND OATHS**—may be taken in the state, by judges, justices of the peace, clerks of courts and notaries. Out of the state, for use in the state, a Louisiana commissioner or any one authorized by the laws of the state where taken to administer oaths. If other than a Louisiana commissioner, authority must be certified by a Louisiana commissioner.

§ 135. **Maine—AFFIDAVITS, OATHS AND AFFIRMATIONS**—taken by a notary when authorized by his state or country, a commissioner of deeds for this state, under their signature and official seal. FORM—swear or affirm under the pains and penalties of perjury.

§ 136. **Maryland—AFFIDAVITS AND OATHS**—taken in this state, when suit is brought on a bond, deed, note, or other instrument in writing, oath to must be made before a judge or justice of this state, or a commissioner of this state, or a judge or justice of another state or country, whose authority must appear and be certified by clerks of courts. Out of the state, before a Maryland commissioner, a judge of a court of record, a notary who must authenticate with his seal. MORTGAGES TO BE VALID—except as between the parties, must have in dorsed thereon an oath or affirmation of the mortgagee that the consideration in said mortgage is true and bona fide as set forth, and an additional oath, that the mortgagee has not required the mortgagor, his agent or attorney, or any person for the said mortgagor, to pay the tax levied upon the interest covenanted to be paid in advance, nor will

he require any tax levied thereon to be paid by the mortgagor or any person for him during the existence of this mortgage. It may be made any time before recording. The affidavit may be made by one of several mortgagees. It may be made by any agent, signing as agent, or by an officer of a corporation, or the executor of the mortgagee.

§ 137. **Massachusetts**—AFFIDAVITS, OATHS AND AFFIRMATIONS—made in the state, before a justice of the peace or notary. Out of the state, a Massachusetts commissioner or a notary. Certification not required.

§ 138. **Michigan**—AFFIDAVITS AND OATHS—may be taken before any justice, judge or clerk of a court of record, circuit court commissioner, notary, justice of the peace, or commissioner appointed by the court. MODE—of, by holding up the right hand, unless the party can show a more solemn form. No witness incompetent on account of his religious views. Parties may affirm.

§ 139. **Minnesota**—AFFIDAVITS AND OATHS—taken by judges of all courts of record in the state, including judges of federal courts, the clerks of said courts, deputy clerks, United States commissioner, members of legislature, court and county commissioners, registers of deeds, justices of the peace, notaries public, all legislative committees, commissioners, referees, and committees appointed by any of said courts for matters coming before them, county auditors, town and city clerks and village recorders. Usual mode with hand uplifted. Notaries can take in their county. Their certificate is prima facie evidence without any other authentication either in or outside of the state. The word “affirm” may be substituted, and “under the pains and penalties of perjury” instead of “so help me God.”

§ 140. **Mississippi**—AFFIDAVITS AND OATHS—administered by a judge of a court of record, clerk of such court, master in chancery, member of the board of supervisors, justice of the peace, notary public, mayor, or police justice of a city, town or village, and any officer of any state, or of the United States, authorized by law to administer, the judge of any court of record, mayor or chief magistrate of city in foreign country. An affirmation has the same effect.

§ 141. **Missouri**—AFFIDAVITS AND OATHS—taken by every court and judge, justice and clerk, justice of the peace, and notaries. To be administered free of charge in cities of over 100,000 inhabitants, by the mayor, comptroller, auditor, register, collector, recorder of deeds, recorder of voters, president of the board of assessors and their deputies when in connection with the business of their offices. In another state, may be taken before a notary public, or justice of the peace, latter being certified by certificate and seal of clerk of court, before clerk of court or any judge of such court, same being certified. AFFIRMATION—permitted. FORM—“You do solemnly declare and affirm, etc., under the pains and penalties of perjury.” The officer

shall adopt the mode most binding on the conscience of persons to be sworn, according to the peculiar ceremonies of their religion.

§ 142. **Montana—AFFIDAVITS**—may be taken in this state, before any judge or clerk of any court, or any justice of the peace, county clerk or notary public. In any other state, before a commissioner appointed by the governor of this state to take affidavits and depositions in that state or before a notary public, any judge or clerk of a court of record having a seal. In a foreign country, before an ambassador, minister, consul, vice consul, or consular agent of the United States, or before any judge of a court of record having a seal. If taken before a judge of a court in another state or foreign country, the genuineness of the signature, existence of the court and the fact that such judge is a member thereof must be certified by the clerk of the court under its seal. **OATHS**—may be administered by any court, judge, or court clerk, justice, notary and officers authorized to take testimony. Witnesses may affirm. Officers are authorized to employ interpreters to issue subpoenas to punish for contempt.

§ 143. **Nebraska—AFFIDAVITS AND OATHS**—may be administered by judges or clerks of the supreme and district courts, by county judges, justices of the peace and notaries public, mayor or chief magistrate of city or town, master commissioner, or commissioner appointed by governor. Party may affirm. May be made in and out of this state before any person authorized to take depositions and must be authenticated in the same way. The officer shall certify that it was sworn to before him and signed in his presence.

§ 144. **Nevada—AFFIDAVITS**—in this state, may be taken before any judge or clerk of any court, or any justice of the peace, or notary public. In another state, before a commissioner appointed by the governor of this state, any notary public, or before a judge of any court having a seal. In a foreign country, before a United States ambassador, minister, or consul, or before any judge of a court of record having a seal. When taken before a judge the clerk must certify to the court's existence and the judge as being a member under the court seal.

§ 145. **New Hampshire—AFFIDAVITS AND OATHS**—means also affirmations. Party affirming to state, "This I do under the pains and penalties of perjury."

§ 146. **New Jersey—AFFIDAVITS, OATHS, ETC.**—who may take—notaries public, commissioners of deeds, attorneys at law, the chancellor or any judge of a court of record, master in chancery, justice of the peace, mayor, recorder or alderman of a city or borough, supreme court commissioners, city clerk, clerk or surrogate of any county, deputy clerk, deputy surrogate clerk of any county or township clerks. In other states and countries, any notary public or officer authorized by the state or country, or authorized by this state, to take acknowledg-

ments, and a recital that he is such officer in the jurat under his signature and seal of office, provided other certificates, when required, be annexed. False swearing subjects to penalty for perjury. May affirm or declare, leaving off "so help me God."

§ 147. **New Mexico**—**FORM PRESCRIBED**—the person swearing shall, with his right hand uplifted, follow the words required, beginning, "I do solemnly swear" and closing "so help me God." If the party is conscientiously opposed to swearing he may affirm, with the right hand uplifted, as follows, "You do solemnly, sincerely and truly declare and affirm," and close with "and this I do under the pains and penalties of perjury."

§ 148. **New York**—**AFFIDAVITS AND OATHS**—may be taken in the state, before a judge, clerk, deputy clerk, special deputy clerk of a court, notary public, mayor, justice of the peace, city magistrate of cities of state, police justice, surrogate, special surrogate, special county judge, county clerk, deputy county clerk, special deputy county clerk, commissioner of deeds, within their district, and, when certified by the officer, may be used in any court or officer in the state. Outside the state, by an officer authorized by his state to take acknowledgments, his certificate to be accompanied by the certificate of his authority by the officer of his state so authorized. Party may affirm instead of swearing, as follows: "You do solemnly, sincerely and truly declare and affirm." Officer may use the mode most binding on the conscience. The witness must be examined first as to his mental capacity to take oath. False swearing in any form is perjury.

§ 149. **North Carolina**—**AFFIDAVITS**—who may take—clerks of the supreme and superior courts, notaries under their seals, justices of the peace, judge or court of the state. Clerks to certify and if for out of the county, court seal is to be attached. Outside the state, notaries can take verifications of pleadings but not ordinary affidavits.

§ 150. **North Dakota**—**AFFIDAVITS AND OATHS**—who to administer—judges of the supreme, district and county courts, clerks of the supreme and district courts, clerks of the county court with increased jurisdiction, county auditors and registers of deeds and their deputies, county commissioners, public administrators in their counties, justices of the peace, notaries, city clerk and auditors, township clerks and village recorders within their respective limits, sheriffs and their deputies in their counties, and other officers in cases lawfully provided for. Persons may affirm when opposed to swearing, subject to penalty for perjury. Any person who makes or administers an oath illegally is guilty of a misdemeanor. Any one outside the state, authorized by his state, can take. Cannot be taken by a party in interest.

§ 151. **Ohio**—**AFFIDAVIT**—may be taken in or out of the state before any person authorized to take depositions, and must be signed by the party who makes it. Certified to by the officer and signed by

him officially. **FORM**—the most binding on the person's conscience. **MILITARY**—the colonel, lieutenant-colonel, major or adjutant of any regiment or battalion raised in this state in the service of the state or United States may administer oaths when necessary to the men in their command.

§ 152. **Oklahoma**—**AFFIDAVITS**—may be made in and out of this territory before any person authorized to take depositions, and must be authenticated in the same way. Affirmation of person, conscientiously scrupulous of taking an oath, may be taken.

§ 153. **Oregon**—**AFFIDAVITS AND OATHS**—may be administered by every court, judge or clerk of court, justice of the peace, notary public and commissioners of deeds. If taken outside the state, must be certified by commissioner of deeds, judge of court, with certificate as to existence of court, judge's membership and genuineness of signature, by clerk, or by notary. **FORM**—party raises his hand, officer saying, "You do solemnly swear that the evidence you shall give in the issue now pending between ——— and ——— shall be the truth, the whole truth, and nothing but the truth, so help you God." Any form more solemnly binding on the witness may be used, according to his religious belief. He may affirm if opposed to an oath.

§ 154. **Pennsylvania**—**AFFIDAVITS, OATHS AND AFFIRMATIONS**—notaries can administer. Outside the state, commissioners or anyone authorized by his state. The latter must be certified by the clerk or prothonotary of the court under his hand and seal. United States commissioners. **FORM**—laying the hand upon the Book, or by raising the hand and repeating the usual words. False swearing is perjury, and subjects the party to a penalty. Affirmation has effect of oath.

§ 155. **Philippine Islands**—who may administer oath for affidavit to be used in the islands—any judge or clerk of a court, justice of the peace or notary. If taken in the United States to be used in islands, a commissioner appointed by the chief executive of the Philippine Islands to take, any notary in the United States, any judge or clerk of a court having a seal. In foreign countries, an ambassador, minister, consul, vice-consul, consular agent, judge of a court of record. Certificates taken in United States or abroad before a judge or a court in the United States or in a foreign country, certified by clerk of court under seal.

§ 156. **Porto Rico**—**OATHS AND AFFIRMATIONS**—to be administered in mode most binding to conscience of affiant and subject to pains and penalties of perjury. Affirmation permitted. Administered by judge of supreme or district courts, secretaries of such courts, justice of the peace, municipal judge, notary public, or United States commissioner for Porto Rico. Without Porto Rico, before clerk of court of record having seal, notary public or commissioner of deeds.

Without the United States, before any notary, minister, commissioner, charge d'affaires, resident in and accredited to country, or consul general, vice consul general, consul, vice consul, commercial agent, vice commercial agent, deputy consul or consular agent or commissioner of deeds. **AFFIDAVITS**—to be in writing and signed.

§ 157. **Rhode Island—AFFIDAVITS AND OATHS**—may be administered anywhere in the state, by the governor, lieutenant-governor, secretary of state, attorney general, assistant attorney general, general treasurer, justices of the supreme and superior courts, speaker of the House of Representatives, commissioners appointed by other states to take acknowledgments of deeds and depositions within this state, notaries public, the railroad commissioner, the insurance commissioner, and the commissioners of shell fisheries. In their respective counties and towns by clerks of court, state senators, judges of district courts, justices of the peace, mayors of cities, judges of probate, presidents of town councils, town clerks and town wardens.

§ 158. **South Carolina—AFFIDAVITS AND OATHS**—who may take—in the state, notaries, trial justice, judge or clerk of court. Outside the state, anyone authorized to probate a deed. **AFFIRMATIONS**—permitted.

§ 159. **South Dakota—AFFIDAVIT**—may be taken in or out of this state by any person authorized to administer oaths, viz.: Each justice of the supreme court, circuit judges, municipal judges, county judges, clerks of courts, auditors, and their deputies, mayors, county commissioners, judges of probate courts, justices of the peace, notaries, commissioners of deeds appointed by the governor of this state, each within their jurisdiction. Party may affirm.

§ 160. **Tennessee—AFFIDAVITS AND OATHS**—who may take—in the state, any judge, justice of the peace, notary, or court clerk. Outside, a judge, justice of the peace, clerk of the court to certify their certificates under the court seal, a Tennessee commissioner, a notary, under their official seal. In a foreign country, by officers authorized to take acknowledgments, authenticated by the clerk of the court under its seal. The party may make solemn affirmation in the words of the oath. May be sworn according to their religion. Party must lay his hand upon the New Testament and solemnly swear upon the Holy Evangelists of Almighty God to speak the truth, the whole truth, and nothing but the truth, and kiss the Book in confirmation. Party may be sworn with the right hand uplifted, to wit: "I (or you) do solemnly appeal to God as a witness of the truth, and avenger of falsehood, as I shall answer for the same at the great day of judgment, when the secrets of all hearts shall be known that," etc. (as case may be).

§ 161. **Texas—AFFIDAVITS AND OATHS**—who may take—in this state—any judge or clerk of a court of record, justice of the peace, or notary public. Any other officers authorized by law. **Affidavits may**

be made in other states, before any clerk of a court of record having a seal, any notary or commissioner of deeds appointed under the laws of this state. May be made by an agent or attorney at the commencement or during a suit. Must be in writing, signed by the party making it. If in foreign countries, before any notary, any United States minister, commissioner or charge d'affaires, any consul general, consul, vice consul, commercial agent, vice commercial agent, deputy or consular agent of the United States resident in such country, or any other officers authorized by law, in the mode most binding on the individual taking, subject to the pains and penalties of perjury.

§ 162. **Utah**—**AFFIDAVITS**—in this state, may be taken before any judge or clerk of any court, or any justice of the peace, or notary public. In another state, before a commissioner appointed by the governor of this state in that state, or a notary, or any judge or clerk of a court of record having a seal. In a foreign country, before an ambassador, minister, consul, vice consul, or consular agent of the United States, or any judge of a court of record having a seal. If taken before a judge of another state or foreign country, the genuineness of the signature of the judge, the existence of the court and the fact that such judge is a member thereof, must be certified by the clerk of the court under seal thereof. **OATHS**—who may take—every court, judge or clerk or deputy clerk of court, justice, or notary, secretary of state, and every officer or person authorized to take testimony in any action, or to decide upon evidence in their own counties. **FORM OF OATH**—may be varied in discretion of court, and witness may be sworn according to peculiar ceremonies of his religion. Affirmation permitted.

§ 163. **Vermont**—**AFFIDAVITS AND OATHS**—may be administered by county clerks, justices of the peace, judges and registers of probate, judges and clerks of municipal and city courts, notaries and masters in chancery, unless otherwise provided by law. A notary need not affix his official seal to his certificate. County clerks, and clerks of city courts, made theirs under the seal of the court. Town clerks, where the instrument is to be used in their office. Party may affirm. Where no other provision is made by law, oaths of office may be made by any justice of the supreme court, superior judge, judge of municipal or city court, justice of the peace, notary public, master in chancery, or the presiding officer, secretary or clerk of either house of the general assembly, clerks and registers of courts, committees of the general assembly, referees, auditors, commissioners, special masters and committees appointed by courts of law or chancery, may administer oaths necessary in matters coming before them.

§ 164. **Virginia**—**AFFIDAVITS AND OATHS**—may be administered by a justice and certified by him unless otherwise provided, or by a notary, a commissioner in chancery, a commissioner appointed by the governor, a court, or clerk of a court, clerks of city councils, or, in case of a survey directed by a court, by or before the surveyor. May be

made before any officer of another state or country so authorized, and shall be deemed duly authenticated if subscribed by such officer, and there be annexed a certificate of the clerk or other officer of a court of record of such state or country under an official seal verifying the genuineness of the signature of the officer and his authority. A certificate of the person administering shall be given so it may be recorded. Parties may affirm.

§ 165. **Washington—AFFIDAVITS, OATHS AND AFFIRMATIONS**—who may take—every court, judge, clerk of a court, justice of the peace, or notary public. **FORM**—party raising the right hand, officer saying, “You do solemnly swear that the evidence you shall give in the issue (or matter) now pending between ——— and ——— shall be the truth, the whole truth, and nothing but the truth, so help you God.” If other than a witness, “You do solemnly swear you will true answers make to such questions as you may be asked.” Officer may adopt the peculiar mode of witness if more effectual and binding. Party may be sworn according to the peculiar ceremony of his religion. Party may affirm if opposed to oath.

§ 166. **West Virginia—AFFIDAVITS AND OATHS**—may be taken by a justice of the peace in his county, a county commissioner, notary, a commissioner appointed by the governor, a court or its clerk, a surveyor appointed by the court, any officer of another state so authorized, subscribed to by him and the certificate annexed under the official court seal, or, if he have no seal, verifying the genuineness of the signature and his authority. Any judge of this state may take. An affidavit stating that the witness or party resides out of the state, or is out of it, shall be prima facie evidence of the fact, same with publisher's affidavit as to publication. Affirmation is equivalent to an oath. Oaths administered shall be certified to by the officer. The certificate of the oath of a notary and all other county, district and municipal officers shall be delivered to and recorded by the clerk of the county court or the clerk of the court exercising its judicial powers, unless taken in open court.

§ 167. **Wisconsin—AFFIDAVIT, OATH AND AFFIRMATION**—who may administer besides those to jurors and witnesses on trial—viz., any judge, court commissioner, clerk of a court of record, notary, town or village clerk, justice of the peace, city or county clerk, within their jurisdiction, also committee authorized to examine witnesses, police justices. **FORM**—any usual one, or according to the peculiar mode of the witness' religious views. Party may affirm. Out of the state, may be taken before judge or commissioner of court of record, master in chancery, notary public, justice of the peace, or other officer authorized to administer oaths. Must have attached certificate of clerk or other proper certifying officer of court of record, under seal stating that officer is as represented, that signature is genuine. No further attestation if oath is certified by notary and impression of seal affixed.

§ 168.—Wyoming—AFFIDAVITS AND OATHS—may be administered by the chief justice and justices of the supreme court, the judges of the district courts, the judge of the circuit court of the United States, including the state of Wyoming, the judge of the district court of the United States for the district of Wyoming, the clerks of the supreme and district courts of this state, and the clerks of the circuit and district courts of the United States for Wyoming, and their deputies, United States commissioners, court commissioners appointed by or under the authority of the laws of this state, county clerks and their deputies, clerks of any city, town or village, county commissioners, county superintendents of schools, justices of the peace and notaries within their respective counties. Parties may be sworn in any form they deem binding on their conscience. AFFIDAVITS—may be made in or out of this state before any person authorized to take depositions and must be authenticated in the same way. Parties may affirm, subject to the pains and penalties of perjury. FORM—with the right hand uplifted swear, concluding with “So help me God.”

§ 169. Canada—AFFIDAVITS—any judge, notary public, justice of the peace, police or stipendiary magistrate, recorder, mayor or commissioner authorized to take affidavits, or other functionary authorized to administer oaths, may take solemn declarations. Affirmations permitted.

CHAPTER III.

CONVEYANCES AND ACKNOWLEDGMENTS.

§ 170. **Scope of Chapter.**—A consideration of the duties of notaries with respect to conveyances in general, and acknowledgments, of necessity involves some inquiry into real property law, including estates in realty and titles. In a broader sense, contracts and sales are also involved, as notaries are frequently required to acknowledge instruments concerning such transactions, and in some cases are requested to prepare such agreements. General forms of contracts, bills of sale, contracts or bonds for deeds, leases, etc., are included in this work.¹ In this chapter, the most important terms concerning such agreements, and the more common terms used in real estate law, are defined and as far as possible explained, as a preliminary to the matter of acknowledgments.

§ 171. **Contracts; Elements and Definition; Requisites of Writing; Statute of Frauds.**—A contract is an agreement which contemplates as its object and results in an obligation for the breach of which a remedy may be had in a court of law.² The following elements are essential: (1) competent parties; (2) an agreement, or offer and acceptance in contemplation of legal liability; (3) a legal object; (4) either a consideration, or a certain form.³ Contracts may be oral or written, but by the enactment in nearly all states of statutes patterned after the English statute of frauds, certain contracts are not legally enforceable unless the evidence to prove them is a writing signed by the party sought to be charged. Contracts included in this restriction are promises to answer for the debt, default or miscarriage of another, promises in

¹ See post, Forms.

² Bays' Commercial Law, vol. 1, p. 33.

"An agreement between two or more parties to do or not to do

a particular thing." Cyc. Law Dict.

³ Bays' Commercial Law, vol. 1, p. 34.

consideration of marriage, promises of executors and administrators, contracts that cannot be performed within a year from the making thereof, contracts for the sale of lands or any interest in or concerning them, except short term leases, and, sometimes, contracts for the sale of goods, wares and merchandise for a certain price or upwards.⁴ There should always be a written contract when the sale of land is concerned, and everything should be clearly and distinctly stated. It prevents the arising of questions of verbal instructions which are not admissible in evidence. Parol evidence is not admissible to vary a contract in writing.⁵

§ 172. Bills of Sale; Conditional Sales and Chattel Mortgages.—A bill of sale is a written agreement, often under seal, by which one person transfers his right or interest in goods and personal chattels to another, but a seal is not necessary.⁶ A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.⁷ The bill of sale is the written evidence of the sale, and like other instruments presented to notaries must usually be witnessed or acknowledged, although such formality is not necessary. A sale may be absolute or conditional. A conditional sale describes the situation where one transfers the ownership of goods upon a provision that the ownership shall come back and revest in him if he, the seller, does something within a certain time, or providing the buyer does something or fails to do something within a certain time. The usual conditional sale is where the title to goods sold is retained by the seller for purpose of security, as where goods are sold on the instalment plan.⁸ In such instances, the conditional bill of sale is usually written, witnessed and acknowledged, the acknowledgment being necessary in order that the instrument may be recorded. A chattel mortgage, at common law, is a sale of a chattel on a condition subsequent upon performance of which the title revests in the mortgagor, and upon breach of which the mortgagee's title becomes absolute.⁹

⁴ Bays' Commercial Law, vol. 1, p. 49 *et seq.*

⁵ Mead v. Dunlevie, 174 N. Y. 108, 66 N. E. 658.

⁶ Cyc. Law. Dict.

⁷ Bays' Commercial Law, vol. 3, p. 17.

⁸ Bays' Commercial Law, vol. 3, p. 19.

⁹ Cyc. Law Dict.

In all states a chattel mortgagee is not protected against subsequent parties dealing with the owner of the goods unless he either takes possession or records the mortgage.¹⁰

§ 173. How Real Estate Is Sold.—Real estate is usually sold by first drawing up a contract between the prospective seller and buyer providing that the seller will sell on certain terms and at a certain price and the buyer will buy upon those terms and at that price, provided that the title is found good upon examination of the abstract of title to be furnished by the seller.¹¹ After the abstract is examined, and defects, if any, corrected, and other conditions performed in accordance with the first contract, the seller executes a deed to the purchaser, conveying the title sold. Frequently sales are made requiring payments extending over a period of months or years, and, in such cases, a contract or bond for deed is executed, requiring the seller to convey the premises by good and sufficient warranty deed, on the payment of the price as stipulated by the purchaser, and the performance of certain incidental covenants usually included, such as the payment of taxes, insurance, etc. In other cases, if the initial payment is of sufficient magnitude, the deed may be given at that time, and the purchaser required to execute a mortgage as security for the payment of the remainder of the money.

§ 174. Conveyances.

§ 175. —In General.—A conveyance is the transfer of the title of land from one person or class of persons to another.¹² The instrument which conveys the property is also called a conveyance. The conveyance may be by deed, record or by devise.¹³

¹⁰ Bays' Commercial Law, vol. 3, p. 74.

¹¹ Bays' Commercial Law, vol. 9, p. 175.

¹² Cyc. Law Dict.

¹³ Bouvier's Inst., secs. 2000, 2002; Hutchinson v. Bramhall, 42 N. J. Eq. 384, 7 Atl. 873.

"Every deed, mortgage or other conveyance in writing, not procured by duress, and signed and

sealed by the party making the same, the maker or makers being of full age, sound mind, and discreet, shall be sufficient, without livery of seizin, for the giving, granting, selling, mortgaging, leasing or otherwise conveying or transferring any lands, tenements or hereditaments in this (the) State, so as, to all intents and purposes, absolutely and fully vest in

§ 176. —Fraudulent Conveyances.—A fraudulent conveyance is a conveyance, the object, tendency or effect of which is to defraud another, or the intent of which is to avoid some duty or debt due by or incumbent on the party making it.¹⁴ Conveyances intended to defeat creditors or others are fraudulent and void and may be attacked in a court of equity.¹⁵ To impeach a conveyance as fraudulent, the intention of both the grantor and grantee must be proven such.¹⁶ A conveyance by husband to his wife, when his liabilities begin to jeopardize his future, should always be regarded with watchful suspicion.¹⁷

§ 177. —Voluntary Conveyances.—A voluntary conveyance is the transfer of an estate without any adequate consideration of value. The presumption of fraud naturally arises,¹⁸ or at least want of consideration may be sufficient to cause an inquiry.¹⁹

§ 178. Estates in Realty.

§ 179. —In General.—An estate is the quantum and duration of proprietary rights in lands, tenements and hereditaments, the theory of the common law being that the tenant or owner is entitled to an estate in the land rather than to the land itself. Estates are classified with reference to their duration or quantum, as freehold estates, including estates of inheritance, such as fee simple estates, and fee tail estates. Also including life estates, and in this latter class are included the estates existing during coverture, and afterwards such as dower and curtesy. A second class of estates less than free-

every donee, grantee, bargainee, mortgagee, lessee or purchaser, all such estate or estates as shall be specified in any such deed, mortgage, lease or other conveyance.” J. & A. Ann. Stat. (Illinois) ¶ 2232.

¹⁴ Cyc. Law Diet.

¹⁵ Kent's Comm., vol. 2, p. *440; Strauss v. Abrahams, 32 Fed. 310; Bridge v. Eggleston, 14 Mass. 250, 7 Am. Dec. 209.

¹⁶ Ball v. Callahan & Son, 95 Ill. App. 615.

¹⁷ Hughes v. Noyes, 171 Ill. 575; 49 N. E. 703; Hauk v. Van Ingen, 97 Ill. App. 642; Township of Maple Valley v. Foley, 113 Mich. 622, 71 N. W. 1086; Hathaway v. Arnold, 157 Wis. 22, 145 N. W. 780.

¹⁸ Cyc. Law Diet.; Lucas v. Lucas, 103 Ill. 121.

¹⁹ Warvelle on Abstracts (4th Ed.), § 234.

hold include estates for years, tenancy at will or by sufferance, and tenancies from year to year. According to the right of present or future enjoyment, estates are classified as present and future, the latter including reversions, remainders, and uses and trusts. Classified according as they are owned by one or more persons, and according to the nature of the rights of the several owners, they are estates in severalty, and joint estates, including joint tenancy, tenancy in common, in entirety, and in coparcenary.²⁰

§ 180. —**Fee Simple Estates; Determinable Fees; Fee Tail Estates; Remainders.**—Fee simple is the absolute estate a man and his heirs have in the land—the largest possible. Fee tail is the inheritable limited estate which descends to certain classes of heirs of the body of an ancestor. Fee determinable is limited to a man and his heirs. An estate in remainder is an estate limited to take effect in possession or enjoyment, or in both, subject to a term of years or contingent interest to intervene, which immediate interest is created by the same instrument out of the same subject of property.²¹ Where a contingent remainder is devised, the fee descends to the heir, and when the contingency happens, the heir's estate opens to let in the remainder.²²

§ 181. —**Life Estates.**—A life estate is held only during the life of the person, such as curtesy and dower.

§ 182. —**Dower and Curtesy.**—Dower is the life estate which a wife has in the lands and tenements of her deceased husband, which was acquired any time during their coverture. At common law, and in most of the United States, it is one-third of the estate. The husband's deed to land will pass the legal title without the wife joining. The object of the wife joining is to pass her right of dower.²³ Where a *feme covert* was the owner of real estate in fee, and executed a deed with her husband, purporting to convey the estate, and the acknowledgment was in substance a mere relinquishment of dower, the deed did not convey the estate of the wife.²⁴

²⁰ Cyc. Law Dict.

²¹ Cyc. Law Dict.

²² Peterson v. Jackson, 196 Ill.
40, 63 N. E. 643.

²³ Egan v. Connelly, 107 Ill.
458.

²⁴ Lane v. Dolick, 6 McLean
(U. S.) 200.

Curtesy is the life estate which a husband has in the estate of his wife after her death, providing they have lawful issue capable of inheriting; it is an estate of freehold.

Estates of dower, and tenancy by the curtesy, have been generally abolished and the surviving spouse takes a statutory allowance from the estate of the deceased, varying in quantity in the various states.²⁵ The terms, especially the term "dower," are frequently used to describe the statutory interest of the wife in her husband's estate.

§ 183. —**Trust Estates.**—A trust estate is one held for the benefit of another. A trustee is the person holding the estate. A *cestui que use* is he for whose use the estate is held. A *cestui que trust* is the equitable owner of the estate. A *cestui que vie* is one whose life measures the duration of the estate.

§ 184. —**Merger of Estates.**—A merger of an estate is the absorption of a lesser estate by the greater when they meet in one and the same person.

§ 185. —**Joint Tenants and Tenants in Common.**—An estate of joint tenancy is that which subsists where several persons have any subject of property jointly between them in equal shares by purchase. Tenants in common are such as hold lands and tenements by several and distinct titles and not by a joint title, but occupy in common. The only unity recognized between them is that of possession.²⁶

§ 186. **Homesteads.**—This is a constitutionally guaranteed right annexed to land used as a home exempting it from sale under execution for debt adopted by all the states of our Union. The homestead of a widow in a flat building or apartment house is confined to the apartment occupied by her as a residence, provided it does not exceed in value the exemption allowed by statute.²⁷ In California, a homestead cannot

²⁵ See post, § 271 *et seq.*

Dower and Curtesy, see Warvelle on Abstracts (4th Ed.), § 23.

²⁶ Cyc. Law. Dict.

²⁷ Potter v. Clapp, 203 Ill. 692, 68 N. E. 81, 96 Am. St. Rep. 322, citing Tiernan v. Creditors, 62 Cal.

286; Mayfield v. Maasden, 59 Iowa 517, 13 N. W. 652; Rhodes, Pogram & Co. v. McCormick, 4 Iowa 368, 68 Am. Dec. 663; Dyson v. Sheley, 11 Mich. 527. Warvelle on Abstracts (4th Ed.), § 22.

be created upon land held in cotenancy, or tenancy in common, in favor of one of the cotenants.²⁸

§ 187. **Easements.**—Easement is the right which the owner of a piece of property has in the lands of another. It may be a right of way, etc.

§ 188. **Emblements.**—Emblements are the products of the land, its crops, etc., sown by the tenant.

§ 189. **Titles to Real Estate.**

§ 190. —**In General.**—A title is the means whereby the owner of lands hath the just possession of his property.²⁹ The validity and construction, as well as the force and effect, of all instruments affecting the title to the land depend upon the law of the state where the land is situated.³⁰

§ 191. —**Good and Marketable Titles.**—For purposes of comparison only, titles are sometimes classified as good and perfect, also known as marketable, and bad or doubtful. The doctrine of marketable titles is purely equitable and of modern origin; at law, every title not incurably defective is marketable.³¹ A good title is one which entitles a man by right to a property or estate, and to the lawful possession of the same. One free from doubt or defects. A marketable title is one which a court of equity considers to be so clear that it will enforce its acceptance by a purchaser. An equitable doctrine but frequently applied in courts of law. A complete title is one having the right of possession joined to the right of property. A doubtful title is one a court of equity does not consider clear enough to enforce an accept-

²⁸ Rosenthal v. Merced Bank, 110 Cal. 198, 42 Pac. 640.

²⁹ 2 Blackstone 195; Coke on Littleton 345; Cyc. Law Dict.; Arrington v. Liscom, 34 Cal. 365, 94 Am. Dec. 722.

“A well defined and strongly marked distinction has been made by elementary writers, between the property or interest which one has in lands * * * and the authority whereby the same are held, or the mode by which they are ac-

quired. This property or specific degree of interest in lands, of whatever kind or nature, is described in the comprehensive term *estate*. The method of acquiring and right of holding same is denominated *title*.” Warvelle on Abstracts (4th Ed.), § 14.

³⁰ Dalton v. Taliaferro, 101 Ill App. 592, citing Harrison v. Weatherby, 180 Ill. 418, 54 N. E. 237.

³¹ Warvelle on Abstracts (4th Ed.), § 16.

ance of, nor defective enough to declare bad. A bad title conveys no property.³²

§ 192. —**Modes of Acquisition of Title.**—Title to real estate is acquired by descent, by purchase and by adverse possession.

§ 193. —**Titles by Descent.**—Descent, or hereditary succession, is the title whereby one person, upon the death of another, succeeds to or acquires the estate of the latter as heir at law, the estate so derived being called an inheritance. Though of universal observance, inheritance is not a natural right but is purely statutory, and therefore arbitrary, absolute and unconditional.³³

§ 194. —**Heirs; Relationship by Affinity and Consanguinity.**—Heirs are those born in lawful matrimony, who succeed to one's estate by descent, or right of blood, and by act of God. There are often heirs by adoption. Affinity is the relation existing by marriage. The kindred of the wife with the husband and the kindred of the husband with the wife. Consanguinity or kindred is the blood degree relationship of individuals, descending from a common ancestor, as ascendants. Ancestors: Great grandfather, great grandmother, grandfather, grandmother, father, mother. Descendants: Son, grandson, great grandson. The degree is established by each generation. Lineal consanguinity is the relation which exists among persons where one is descended from the other as between father and son, in the direct line of descent.³⁴ Collateral consanguinity is the relationship between persons having the same ancestry but not the same descendants, like uncle and nephew. Father, son and grandson are lineal descendants. To descend from the same father and mother, same grandfather and grandmother, is to be of the whole blood, but to have the same father and grandfather, but different mother or grandmother, is to be of the half blood. In the civil law persons born of the same father and grandfather but of different mothers or grandmothers are consanguineous children. Those born of the same mother or grandmother but of a differ-

³² Cyc. Law Dict.

³⁴ Warvelle on Abstracts (4th

³³ Warvelle on Abstracts (4th Ed.), § 31.
Ed.), § 29.

ent father are called uterine children. The common law follows the former, or canon law.

§ 195. —Titles by Purchase.—Title by purchase is a generic term and includes every mode of coming to an estate, except by inheritance. Its limited application is to acquisition by bargain and sale.³⁵ Title by deed is the most common form of purchase, and that by which the great bulk of all the real property in the country is directly held.

§ 196. —Prescription and Limitations; Adverse Possession.—Prescription is that title which arises from long and continued possession of property, and is founded upon the presumption that the party in possession would not have been allowed by other claimants to hold the same without a just and paramount right. The period of prescription, at the common law, does not extend farther back than sixty years, and in general it is the policy of the courts to limit the presumption of grants to periods analogous to those of the statute of limitations.³⁶

Limitation of actions is the statutory restriction of the time within which an action may be brought.³⁷ The state legislatures usually have power to prescribe a reasonable time within which rights may be enforced.³⁸ One having title to land under a statute of limitation may maintain an action against one who has lost title to it by the same statute.³⁹

Title by adverse possession is the enjoyment of land, or such estate as lies in grant, under such circumstances as indicate that such enjoyment has been commenced and continued under an assertion or color of right on the part of the possessor.⁴⁰ If a landowner permits the owner of adjoining land, in fencing his land, to inclose a portion of his land, and keep the same, claiming title coextensive with the inclosure for twenty years, the bar of the statute of limitations will be

³⁵ Warvelle on Abstracts (4th Ed.), § 37.

³⁶ Warvelle on Abstracts (4th Ed.), § 45.

³⁷ Cyc. Law Dict.

³⁸ Lanz-Owen & Co. v. Garage

Equipment Mfg. Co., 151 Wis. 555, 139 N. W. 393.

³⁹ Bradley v. Lightcap, 202 Ill. 154, 67 N. E. 45.

⁴⁰ Cyc. Law Dict. French v. Pearce, 8 Conn. 440; Smith v. Burtis, 9 Johns. (N. Y.) 174.

applied.⁴¹ Undisputed possession for more than twenty years under written conveyance gives exclusive ownership adverse to all the world.⁴²

§ 197. **Eminent Domain.**—Eminent domain is the right which the government holds over all lands to appropriate them to public use when necessary.⁴³

§ 198. **Defeasance.**—A defeasance is an instrument which defeats the force or operation of some other instrument, or deed, or estate. That which in the same deed is called a condition in another is called a defeasance.⁴⁴

§ 199. **Abstracts of Title.**—An abstract is a condensed history of the title to land, consisting of a synopsis or summary of the material or operative portions of all the various instruments of conveyance which in any manner affect said land or the title thereto, or any estate or interest therein, together with a statement of all liens, charges or liabilities to which the same may be subject, and of which it is in any way material for purchasers to be apprised.⁴⁵ The vendor prepares and pays for the abstract and the purchaser has his lawyer examine the titles. Most abstracts are now prepared by abstract companies. No one is bound to accept or give an indemnity for a defective or incumbered title, and it should be refused.⁴⁶

§ 200. **Examination of Titles.**—In compiling an abstract, the examiner simply collects, condenses and arranges the information found of record, without any expression as to the rights of any of the parties named therein. The American abstract is not prepared from original documents, but from the recorded evidence thereof found in the offices of registration, courts, and other legal depositories, and, as a rule, shows

⁴¹ O'Flaherty v. Mann, 196 Ill. 304, 63 N. E. 727.

⁴² Gilman v. Brown, 115 Wis. 1, 91 N. W. 227.

⁴³ Warvelle on Abstracts (4th Ed.), § 53; Kent's Comm., vol. 2, pp. 338, 339; Beckman v. Saratoga

& S. R. Co., 3 Paige (N. Y.) 73, 22 Am. Dec. 679.

⁴⁴ Cyc. Law Dict.

⁴⁵ Warvelle on Abstracts (4th Ed.), § 2.

⁴⁶ Bispham Pr. Eq. secs. 378, 379; Woodford v. Leavenworth, 14 Ind. 314.

only such title as is deducible of record.⁴⁷ The work is then turned over to a lawyer, who critically examines each instrument shown or statement made; decides upon the sufficiency and legal effect of the conveyances, noting any defects, or irregularities therein, or in any of the proceedings necessary to divest or acquire title; determines the relative rights and legal relations of the parties to the land in question and to each other; and finally formulates his views in a written opinion which is annexed to the abstract, and on the strength of which future sales or other dispositions of the property are usually made.

§ 201. **Surveys.**—The United States government surveys are uniform and are done under what is known as the “rectangular system.” Certain east and west lines run with the parallels of latitude and the north and south township lines with the meridians. The system provided for sales in sections of 640 acres, one mile square, quarter sections of 160 acres, or quarter sections of 40 acres. To secure certainty and brevity of description, twenty-four initial points on the intersection of the principal bases with surveying meridians

⁴⁷ Warvelle on Abstracts (4th Ed.), § 6.

To examine a title—search county register's or recorder's office for—deeds, mortgages, agreements, powers of attorney, assignments of mortgages, leases, trusts by deed, collector's satisfaction piece (suit upon same limited to three years after record), surveys.

Search county clerk's office for—taxes forfeited, bonds of tax collector.

Search county treasurer's office for—taxes not delinquent, inheritance taxes, special assessments, bonds of collectors of taxes.

Search county or probate courts for—deceased estates, deeds with defeasances, wills, trusts, insolvent assignments.

Search various courts for—judg-

ments, notices of *lis pendens*, assignments of judgments, foreclosures, receivers, forfeited recognizances, executions, mechanics' liens (county or circuit).

Search circuit court for—mechanics' liens.

Search sheriff's office for—executions, sales.

Search criminal court's office for—fines, etc.

Search U. S. C. C. A., circuit and district courts for—judgments and decrees, criminal fines and judgments, petitions in bankruptcy.

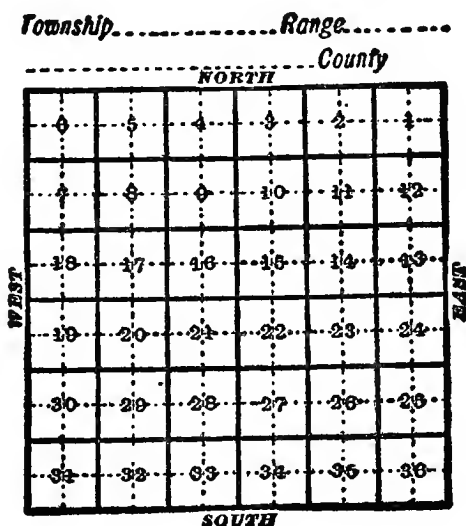
Search U. S. marshal's office for—sales.

Search city and village treasurer's offices for—special assessments.

Search city or village clerk's office for—water taxes.

have been used. From the principal bases, townships of six miles square are run out and established with regular series of numbers counting north and south thereof, and from the surveying meridians a like series of ranges are numbered, both east and west of the principal meridians. In order to correct inaccuracies that would otherwise arise from the convergency of meridians as they run to the north pole, and to check errors arising from inaccuracies in measurements on meridian lines, standard parallels or correction lines are run and marked at every four townships or twenty-four miles north of the base, and at every five townships, or thirty miles south of the same. Guide meridians are next surveyed at intervals of eight ranges, or forty-eight miles, east and west of the principal meridian, starting north of the base line in the first instance from the line and closing on the first standard north, then starting from the first standard and closing on the second standard north, and so on. South of the base line, the guide meridians start from the first standard south, and close on the base line; then starting from the second standard, and closing on the first standard, and again starting from the third standard and closing on the second, and so on. The closing corners on the base line and standard parallels are established at the intersection of the meridional lines therewith, thus, owing to the convergency of meridians, occasioning a double set of corners in those lines which are designated as "standard corners" and "closing corners." The closing corners on the base line and standard parallels the rectangular system (except in California and Oregon, where it is otherwise by some mistake of the original surveyor). These parallelograms are each subdivided into townships six miles square, containing about 23,040 acres. Each township is subdivided into 36 sections of one mile square, each containing, as near as possible, 640 acres. These are subdivided into quarter sections of 160 acres, and these into quarter quarter sections of 40 acres. A tier of townships running north and south is called a range, and each range is numbered as it is east or west of the principal meridian. Each township is also numbered as it is north or south of the base line. The townships are marked by wooden posts four inches square standing two feet deep and two feet above

the ground, marked facing the township. The sections are marked with their numbers facing it with its township and range. Each quarter-section or half-mile post has on it $\frac{1}{4}$ S., to indicate what it stands for. The township corner-posts are notched with six notches on each of its four angles. All mile posts on township lines have as many notches on two opposite angles as they are miles distant from the township corners.



§ 202. Inception of Title; Patents.—In the United States, the word “patent” when used in connection with real property, means the title deed by which a government, either state or federal, conveys its lands. It is the highest evidence of

derivative title known to the law, and passes full legal title to the land.⁴⁸

§ 203. Deeds.

§ 204. —**Definition; Construction.**—The term “deed” is very comprehensive in its signification, and denotes not only all classes of instruments for the conveyance of land, but any instrument in writing under seal, whether relating to land or any other matter. In its popular acceptance, however, it is confined to conveyances of lands, or estates or interests therein, and is still further restricted in its meaning to absolute sales, as distinguished from mortgages, indicating conditional sales, though the latter are as essentially deeds as the former.⁴⁹

A deed will be construed according to the apparent intent where the language is defective, and, if necessary, the clauses may be rejected or transposed so as to give it its apparent construction.⁵⁰ Instruments in writing should be so construed as to render them valid and effectual rather than void. Where one part of the description is false and impossible, but, by rejecting that a perfect description remains, the false and impossible should be rejected.⁵¹

§ 205. —**Kinds of Deeds.**—Quitclaim is a release deed relinquishing all claims to the property for a consideration. It may be for one dollar, love and affection, so long as there is a consideration. Tax deed is the instrument by which the officers of the law transfer the title of the rightful owner, for nonpayment of taxes, to a purchaser at the tax sale. Trust deed is a form of mortgage much used in many states. A deed is made in trust with a power of sale in favor of the mortgagee, with provisions for attorneys' fees in case of foreclosure.

⁴⁸ Warvelle on Abstracts (4th Ed.), §§ 148, 149.

⁴⁹ Warvelle on Abstracts (4th Ed.), § 38.

⁵⁰ Barkhausen v. Chicago, M. & St. P. R. Co., 142 Wis. 292, 124 N. W. 649, 125 N. W. 680; War-

velle's Vendors 353, citing Cumberland Building & Loan Ass'n v. Aramingo M. E. Church, 13 Phila. (Pa.) 171; Staton v. Mullis, 92 N. C. 623.

⁵¹ Anderson v. Baughman, 7 Mich. 69, 74 Am. Dec. 699.

§ 206. —**Form of Deed; Formal Parts.**—No particular form is necessary, so long as the intent of the parties is clearly set forth and can be readily ascertained in the deed. Uncertain language vitiates it. The tendency is to very short forms. When made by an attorney, they should be in the name of the principal. The attorney must be appointed by letter of attorney. If by a corporation, it must be executed in the corporation's name by officers authorized, and under the corporation seal.⁵²

The formal parts are: (1) The premises: Setting forth parties' names, the reasons for the contract, the consideration, with a description of the land. (2) The habendum: To have, showing what estate passes. (3) The tenendum: To hold, formerly the tenure, now of little meaning. (4) The redendum: The reservation. (5) The conditions. (6) The warranty: Covenant damages. (7) The covenants: The agreement to do or not to do something, either expressed or implied. (8) The conclusion: The execution and date.

§ 207. —**Requisites of Deeds.**—The requisites of a deed are that there be sufficient parties, that it be in writing or printing, on paper or parchment; that there be a consideration; that sufficient words be used; that it be read when required; that it be signed and sealed; that it be witnessed; that it be delivered, acknowledged and recorded.⁵³

§ 208. —**Parties.**—Parties to a deed are: The grantor, who makes the deed; the grantee, to whom it is made. Care should be had as to the names and surnames of the parties. A deed must be to some certain person or corporation.⁵⁴ All persons having complete ownership, of sound mind, of full age, not in duress, unless otherwise disqualified by law, can acquire

⁵² Bouvier's Inst. sec. 2010; Plummer v. Russell, 2 Bibb (Ky.) 174; Elwell v. Shaw, 16 Mass. 42, 8 Am. Dec. 126; Hatch's Lessee v. Barr, 1 Ohio 390.

⁵³ Bouvier's Inst. sec. 2099.

⁵⁴ Jackson *ex dem.* Cooper v. Cory, 8 Johns. (N. Y.) 388.

or alien title to land. In some states aliens are forbidden to hold by statute.

§ 209. —**Descriptions of Realty; Boundaries.**—After the parties to a conveyance, the description of the thing or subject-matter conveyed is the great essential. Such description must, either in terms or by reference to other designation, describe the subject-matter intended to be conveyed sufficiently to identify the same with reasonable certainty.⁵⁵ Land is usually described according to the government survey,⁵⁶ or is platted, but may be otherwise described if the identity of the property intended to be conveyed is established. Frequently reference is made to certain boundaries or monuments. Boundaries are the lines between estates. They may be natural or artificial, such as monuments or stones, trees, streams or certain objects. The line usually extends to the center of streams and to the center of a street in cities or roads in the country; to the shore of rivers or low tide water of the ocean.⁵⁷ While the courts are usually liberal in construing deeds to carry out the intention of the parties, it must be remembered that nothing passes by a deed except what is described in it, and parol evidence is not admissible to make the deed operate upon land not embraced in the descriptive words.⁵⁸

§ 210. —**Consideration.**—A consideration is of little consequence as between the parties, one dollar is accounted sufficient; but when creditors are affected it becomes necessary to inquire into it. It may be founded on a good or valuable consideration.

§ 211. —**Delivery; Escrow Agreements.**—The delivery of a deed is when its effect takes place and not from its date. A

⁵⁵ Warvelle on Abstracts (4th Ed.), §§ 183, 184. Flanigan, 75 Iowa 365, 39 N. W. 645.

⁵⁶ Ante, § 201.

⁵⁸ Warvelle on Abstracts (4th

⁵⁷ Cyc. Law. Dict.; Walrod v. Ed.), § 186.

date is not necessary.⁵⁹ A deed may be delivered conditionally to a third person, either to be delivered to the grantee without condition when the rights of the grantee to the deed immediately attach, or it may be delivered as an escrow.

An escrow is a conditional delivery of a deed to a stranger until certain conditions shall be performed, to be then delivered to the grantee, the conditions to be distinctly stated at the time of delivery.⁶⁰

§ 212. —**Covenants for Title.**—Covenants for title usually are: That the vendor is lawfully seized (or in possession) of the land; that he has the power to convey it; that he promises peaceful possession to the purchaser, his heirs and assigns; that it is free from all incumbrances; and for further assurance.⁶¹ Covenants running with the land are to be governed and controlled by the laws of the state where the land is situated.⁶²

§ 213. —**Witnesses; Seal.**—Witnesses were not required at common law. They are required now only in certain states of this country. An unacknowledged deed requires witnesses, but seldom does an acknowledged deed. They are necessary to prove the issue, or genuineness. When the statutes require two witnesses to a deed, one only will invalidate the deed.⁶³

Sealing is very ancient. At common law it was required. In many states of this country it has been abolished. A scroll is all that is now required, except for corporations, which are required to have their name engraved on a metal disc so as to leave an impression on the document.

§ 214. **Erasures and Errors.**—Deeds must be fully complete before delivery. Alterations made afterwards will either avoid

⁵⁹ Bouvier's Inst. sec. 2022; McConnell v. Brown, Litt. Sel. Cas. (Ky.) 459; Hood v. Brown, 2 Ohio 268; Fairbanks v. Metcalf, 8 Mass. 230; Robinson v. Wheeler, 25 N. Y. 252; Harrington v. Gage, 6 Vt. 532; Harvey v. Alexander, 1 Rand. (Va.) 219, 10 Am. Dec. 519.

⁶⁰ Cyc. Law Dict.; Clark v. Gifford, 10 Wend. (N. Y.) 310.

⁶¹ Warvelle on Abstracts (4th Ed.), § 191.

⁶² Dalton v. Taliaferro, 101 Ill. App. 592, citing 4 Kent's Comm. 472.

⁶³ Thompson v. Morgan, 6 Minn. 292 (Gil. 199); Parret v. Shubhut, 5 Minn. 323 (Gil. 258).

or make them of no effect.⁶⁴ All alterations, erasures or interlineations in deeds should be avoided, as they tend to question the instrument.

§ 215. Validity of Deeds; Effect of Duress, Fraud or Undue Influence and Intoxication.—As a contract implies a voluntary assent, any influence, force, fraud or cause whatsoever, preventing the freedom of the consent, makes the contract voidable, and any cause preventing reality of consent makes the act void.⁶⁵ The distinction is illustrated in cases of fraud. Where one party misleads another as to the very nature of the act, no contract can result. But if a statement is made which is false, which is known to be false by the party making it, as to a material fact, intended to induce the contract and which the other party relies upon, the contract is rendered voidable, at the instance of the party defrauded. The validity of deeds is often attacked because of fraud, and frequently in such cases undue influence is also involved. Such undue influence consists in an abuse of influence or power which one person by reason of a fiduciary relationship, or of the sickness, infirmity or necessitous distress of the other, has over that other, thereby inducing him to enter into a contract he would not have freely made.⁶⁶ In the case of undue influence over the maker of a deed, equity will set it aside.⁶⁷ Intoxication may also avoid a deed.⁶⁸

Duress of a person is that condition of his mind caused by wrongful conduct of another, rendering him incompetent to contract by the exercise of his own free will.⁶⁹ A deed made under duress of imprisonment or fear from threats of personal violence is voidable but not void.⁷⁰

§ 216. Recording of Deeds.—Recording of deeds, mortgages, liens, judgments, wills and other instruments pertain-

⁶⁴ Wallace v. Harmstad, 15 Pa. St. 462, 53 Am. Dec. 603.

⁶⁵ Bays' Commercial Law, vol. 1, p. 79.

⁶⁶ Bays' Commercial Law, vol. 1, p. 87.

⁶⁷ Howe v. Howe, 99 Mass. 88.

⁶⁸ Johnson v. Phifer, 6 Neb. 401.

⁶⁹ Batavian Bank v. North, 114 Wis. 637, 90 N. W. 1016; Galusha v. Sherman, 105 Wis. 263, 81 N. W. 495, 47 L. R. A. 417.

⁷⁰ Sandford v. McLean, 3 Paige (N. Y.) 117, 23 Am. Dec. 773.

ing to real estate, is necessary in order to give notice to the public regarding the title of the property. Deeds and mortgages may be valid as between the parties and those having notice, but an innocent purchaser might be defrauded.⁷¹ The recording acts usually provide that conveyances not recorded shall be void as against subsequent purchasers in good faith and for a valuable consideration, of the same land, or any portion thereof, whose deed of conveyance shall be first duly recorded; and further, that every instrument recorded in the manner prescribed by statute shall, from the time of filing same for record, impart notice to all persons of the contents thereof.⁷²

§ 217. Essentials to Recording; Proof of Deeds.—All deeds must either be acknowledged or proved before they can be placed on record as evidence of the conveyance. A deed is proved when witnesses testify to its genuineness. This they do either by having seen the grantor sign it or declare that he signed it. The statutes usually contain provisions governing this matter. Usually, proof of the execution may be made by one of the subscribing witnesses.^{72a} A witness is one who gives oral testimony in a judicial proceeding. A witness who signs an instrument to denote that the same was executed in his presence is called a “subscribing” or “attesting” witness.^{72b} The competency of the witness is presumed.⁷³

§ 218. Registration of Titles.—The Torrens system of registration of titles is a system whereby titles to real estate are registered as being in a certain person at the date of registration, and a certificate of title is issued by the state declaring title in such person.⁷⁴

⁷¹ A deed is valid as between parties to it without being acknowledged or recorded. *Seiple v. Miles*, 2 Seam. (Ill.) 315.

Knowledge of the existence of an unrecorded deed may be a sufficient ground for the imputation of constructive fraud to a subsequent purchaser. *Schroeder v. Tomlinson*, 70 Conn. 348, 39 Atl. 484.

⁷² Warvelle on Abstracts (4th

Ed.), § 65. See post, § 272 *et seq.*

^{72a} *O'Sullivan v. Overton*, 56 Conn. 102, 14 Atl. 300; *Gelott v. Goodspeed*, 8 Cush. (Mass.) 412; *Melcher v. Flanders*, 40 N. H. 139.

See also post, § 272 *et seq.*

^{72b} Cyc. Law Dict.

⁷³ *Job v. Tebbetts*, 4 Gilm. (Ill.) 143.

⁷⁴ *Bays' Commercial Law*, vol. 9, p. 187. Torrens law is a system

§ 219. Agent's Contracts Concerning Realty; Powers of Attorney.—Contracts concerning real estate are frequently executed through the intervention of real estate agents or brokers, who bring the buyers and sellers together, or make contracts for them. Such agents have no authority to contract, except as the authority is specially conferred, and they should be careful not to exceed their authority.⁷⁵ By the statute of frauds as enacted in some states, an agency to contract for the sale of real estate is not enforceable, unless in writing.⁷⁶ Authority to execute an instrument under seal must also be under seal. And when an appointment is formally drawn up, under seal, it is said to be a power of attorney.⁷⁷ Agent's contracts are frequently not signed by the agent, who procures the signature of his principal, or, if signed, provision is made for the signature of the principal also. When a deed is given the broker's name may not appear. But in the case of powers of attorney, the instrument is executed in the name of the principal by the attorney in fact.⁷⁸

§ 220. Conveyances of Partners.—Conveyances of partnerships should be executed by each and all of the partners in the same manner as deeds by tenants in common, and it seems that a deed executed by one partner only in the name of the firm will convey only the undivided portion of the estate

used in Australia, Germany, France, England and several other countries. It is claimed to be a simpler method of transferring lands. It has been adopted to some extent in Illinois, Ohio, Massachusetts, Minnesota, Oregon, California, Colorado, Washington the Philippine Islands and Hawaii.

⁷⁵ Bays' Commercial Law, vol. 4, p. 87.

⁷⁶ Bays' Commercial Law, vol. 4, p. 30.

⁷⁷ Bays' Commercial Law, vol. 4, p. 31.

A power of attorney is an instrument authorizing a person to act as

the attorney in fact of the person granting it. Cyc. Law Dict.

⁷⁸ Bays' Commercial Law, vol. 4, p. 88. See also Warvelle on Abstracts (4th Ed.), §§ 262, 263.

Deeds when made by an attorney should be in the name of the principal. The attorney must be appointed by letter of attorney. If by a corporation, it must be executed in the corporation's name by officers authorized, and under the corporation seal. Bouvier's Inst. sec. 2010; Plummer v. Russell, 2 Bibb (Ky.) 174; Elwell v. Shaw, 16 Mass. 42, 8 Am. Dec. 126; Hatch's Lessee v. Barr, 1 Ohio 390.

owned by such partner, or rather only a contingent right to such part after the debts are paid.⁷⁹

§ 221. **Contracts and Conveyances Between Husband and Wife; "Coverture" and "Feme Sole."**—Coverture is the state of a married woman, and a *feme sole* is an unmarried woman.

By the modern statutes, the incapacity of married women to contract, as it existed at the common law, has been almost entirely removed.⁸⁰ The rule applies to conveyances, and conveyances by husband to wife without the intervention of a trustee or third person are upheld in courts of equity, when suitable and meritorious, and not in fraud of creditors. In states where the legal identity of husband and wife is no longer recognized, such conveyances are good at law. Where the ancient doctrine obtains, a deed from husband to wife, without the intervention of a trustee, is void at law.⁸¹

§ 222. **Conveyances by Married Women.**—With reference to conveyances by married women, recent statutory enactments in many states tend to remove entirely all restraints from the free acquisition and alienation of property by married women. Because of the common-law rule, special statutory authority is necessary, however, to validate such conveyances. Such statutes being in derogation of the common law, are strictly construed, and a rigid and literal compliance with the statute is essential to vest title in the grantee. The emancipation of married women in this respect has been gradual, and at first the execution of deeds was attended by many formalities, particularly as to acknowledgment and authentication. Such formalities are in the main unessential now, but in many jurisdictions, joinder of the husband is necessary.⁸² When homesteads are conveyed, joinder of husband and wife is usually necessary.⁸³

⁷⁹ Warvelle on Abstracts (4th Ed.), § 249.

One partner has no right to bind his copartners by deed. If executed in the presence of his copartners, it is deemed an execution by them. Haynes, Hutt & Co. v. Seachrest, 13 Iowa 455; Brooks v. Sullivan, 32 Wis. 444; Thompson

v. Bowman, 6 Wall. (U. S.) 316, 18 L. Ed. 736.

⁸⁰ Bays' Commercial Law, vol. 1, p. 69.

⁸¹ Warvelle on Abstracts (4th Ed.), § 242.

⁸² Warvelle on Abstracts (4th Ed.), § 243.

⁸³ Knox v. Brady, 74 Ill. 476.

§ 223. Mortgages.—A mortgage is a conveyance by deed of lands by a debtor (called a mortgagor) to his creditor (called a mortgagee) as a pledge and security for the payment of the money borrowed, or the performance of a covenant, with a proviso that the conveyance be void on the payment of the money and interest on a certain day, or the performance of the covenant by which the conveyance of the land becomes absolute at law; yet the mortgagor has an equity of redemption in a reasonable time and to call for a reconveyance. A note or bond usually is given with the mortgage as evidence of the debt.⁸⁴ The mortgage is in the form of a conditional conveyance of the fee. Mortgages as trust deeds are often used. They are made to a third party, as trustee, with power to sell, allowing attorney's fees and costs, and in many states are considered better than the usual form of mortgage. One who transfers without recourse a promissory note, together with a mortgage given to secure it, thereby warrants the validity of the security.⁸⁵

To create a lien on a homestead estate of mortgagor the certificate of acknowledgment must show that the estate was waived and relinquished.⁸⁶

§ 224. Satisfaction of Mortgages.—When the debt due under a mortgage is paid, the mortgage is discharged. Such payment must be in full, and entitles the mortgagor to a satisfaction. This is an instrument which is recorded with the register of recorder, showing payment. In some states, satisfaction may be shown by an entry on the margin of the record, thereby operating as public notice. The performance of the conditions of the mortgage by payment before maturity leaves the mortgagee with no estate in or title to the premises. It leaves the mortgagor in his former estate.⁸⁷

§ 225. Mortgage Foreclosure; Redemption.—Where a mort-

To convey a homestead right, the deed and acknowledgment must contain a clause waiving the rights of homestead. *Ogden Building & Loan Ass'n v. Mensch*, 196 Ill. 554, 63 N. E. 1049, 89 Am. St. Rep. 330.

⁸⁴ *Bays' Commercial Law*, vol. 9, p. 114; *Cyc. Law Dict.*; *Bouvier's*

Inst. sec. 884; *Hall v. Byrne*, 2 Ill. 142; *Keith v. Burrows*, 1 C. P. Div. 731.

⁸⁵ *Waller v. Staples*, 107 Iowa 738, 77 N. W. 570.

⁸⁶ *Id.*

⁸⁷ *Flye v. Berry*, 181 Mass. 442, 63 N. E. 1071.

gagor fails to pay the debt when it is due, and the mortgagee finds that he must pursue some remedy to obtain satisfaction, the usual remedy is that of making use of his security and is done by means of foreclosure. Under the modern practice, such foreclosure is either by judicial proceeding to sell the property and pay the debt out of the proceeds, or to sell at a nonjudicial sale under a power of sale in the mortgage.⁸⁸ In the case of foreclosure, the mortgagor has the right of redeeming his property from the sale for a certain period of time by paying the debt with a rate of interest provided by law, and in certain cases a penalty. This is a right given by statute.⁸⁹ The legal title of a mortgagor remains in him until the execution of a deed, although he fails to redeem. A purchaser at a foreclosure sale who fails to take out a deed within the time allowed by statute has no rights which equity can protect, although they may have had continuous possession since before the entry of the foreclosure decree.⁹⁰ The purchaser at a master's sale acquires no title, but merely the right to receive the redemption money, or a master's deed in case the property is not redeemed.⁹¹ A life tenant of a portion of a mortgaged estate can redeem his or her portion by paying their proportionate amount of the mortgage with proportionate interest, if agreeable to the mortgagee.⁹²

§ 226. **Judicial Sales.**—Judicial sales are made, under authority of the court, by its officer, sheriff or marshal. The officer conveys all the rights of the defendant in the property sold. The sale carries no warranty, and must be confirmed by the court. Actions for recovery may be instituted within a period of time, or the court, for just reasons, may set the sale aside. At judicial or sheriffs' sales parties buy merely the interest or judgment, not a title.

§ 227. **Action for Recovery.**—Action for recovery is a com-

⁸⁸ Bays' Commercial Law, vol. 9, p. 123.

⁸⁹ Bays' Commercial Law, vol. 9, p. 126.

Period of redemption, see post, § 272 *et seq.*, Statutory Requirements.

⁹⁰ Bradley v. Lightcap, 202 Ill. 154, 67 N. E. 45.

⁹¹ Strauss v. Tuckhorn, 200 Ill. 75, 65 N. E. 683.

⁹² Kerse v. Miller, 169 Mass. 44, 47 N. E. 504.

mon-law right recognized by every state in the Union (Louisiana excepted), allowing a limited time for the restoration of a former right.⁹³

§ 228. **Judgments and Writs of Execution.**—Judgment is the conclusion that naturally and regularly follows from the premises of law and fact, and depends not, therefore, on the arbitrary caprice of the judges, but on the settled and invariable principles of justice.⁹⁴ A judgment in the legal acceptance is the determination of some judicial tribunal created by law for the administration of public justice, according to law, and is in strictness the determination of the law.⁹⁵ Judgments are the final decisions of the courts of law awarding the amount to be paid by the debtor. They are a lien upon the properties of the debtor until they are fully satisfied, or execution is issued. They sometimes are continued for a period of years. They are entered in a book of records and should be the last thing examined in a search for title.⁹⁶ Assignment of judgment transfers only an equitable title.⁹⁷

An execution is the writ of the court putting into effect the judgment. Proceedings for taking land upon execution are *stricti juris*, and no title passes unless the statute is exactly pursued.⁹⁸

§ 229. Liens.

§ 230. —**In General.**—A lien is a hold or claim which one person has upon the property of another as a security for some debt or charge.⁹⁹ Taxes, dower, curtesy, leases, mechanics' liens, mortgages and judgments are all liens on real estate. A lien is not a property in the thing itself, nor does it constitute a mere right of action for the thing. It more properly constitutes a charge upon the thing. It is an equitable right creditors have upon the property of the debtor. A creditor at large cannot enforce the liability without a preliminary judgment and execution.¹

⁹³ Cyc. Law Dict.

⁹⁴ *In re Sedgely Ave.*, 88 Pa.

509.

⁹⁵ *Blood v. Bates*, 31 Vt. 147.

⁹⁶ *Evans v. Adams*, 3 Green (N.

J.) 383.

⁹⁷ *Schmidt v. Shaver*, 196 Ill.

108, 63 N. E. 655, 89 Am. St. Rep. 250.

⁹⁸ *Schroeder v. Tomlinson*, 70 Conn. 348, 39 Atl. 484.

⁹⁹ Cyc. Law Dict.

¹ *Ocean Nat. Bank v. Olcott*, 46 N. Y. 12.

§ 231. —**Mechanics' Liens.**—Mechanics' liens are statutory liens permitted in every state of the Union for the recovery of money due for labor performed, or material furnished on land, mines, vessels or buildings by contractors or materialmen and laborers for the owner or tenant of the property. When the work is finished and the payment, or any part of it, is refused, the claim must be filed within a statutory period with an officer of the law, usually the county clerk. A stated time is allowed for the payment, when suit can be instituted. After judgment it remains a lien until satisfied unless barred by statutory limitations. It may attach to an equitable interest in real property, and when foreclosed the decree is a lien thereon.²

§ 232. **Taxes and Tax Sales.**—A tax is the contribution imposed by the government for the service of the state.³ Tax sales are sales of the property of the owner for nonpayment of taxes due the state. Taxes are allowed to run for a certain period, then the property becomes forfeited for nonpayment and is sold at auction to the highest bidder. After a given period, if still unpaid, or redeemed, a tax deed is issued to the purchaser, which bars the owner's recovery.

§ 233. **Lis Pendens.**—*Lis pendens* means literally a pending suit, and is the control which a court has, during the pendency of an action, over the property involved. One who purchases property pending an action takes title subject to the event of the action.⁴

§ 234. **Caveat Emptor.**—*Caveat emptor* is a maxim employed in the law to signify that a purchaser, whether of realty or personalty, is not only bound to discover obvious defects for himself, but is confined to the warranties which he has required, and cannot, in the absence of fraud, rely on the statements of the seller.⁵ It means let the buyer beware, and applies particularly to judicial sales.

§ 235. **Waiver.**—Waiver is the voluntary surrender and relinquishment of a right.⁶

² Sheppard v. Messenger, 107 Iowa 717, 77 N. W. 515.

³ Cyc. Law Dict.

⁴ Cyc. Law Dict.

⁵ Cyc. Law Dict.

⁶ Cyc. Law Dict.

§ 236. Releases and Assignments.—A release is the giving up or abandoning of a claim or right to the person against whom the claim exists, or the right is to be exercised or enforced. With respect to conveyances, in the United States, releases to real estate are executed by quitclaim deeds. An assignment is commonly used to indicate any transfer or making over to another of the whole of any property, real or personal, in possession or action, or of any estate or interest therein.⁷

§ 237. Leases.—A lease is a contract by which a person owning or controlling lands or tenements permits another to occupy the same for a period less than that to which the right of the lessor extends. The person permitting the occupation is called the “lessor,” and the person contracting for possession is called the “lessee.”⁸ It is a contract for the possession and profits of lands and tenements, on the one side, and a recompense of rent, or other income, on the other; it is a conveyance for life, or years, or at will, in consideration of a return of rent or other recompense. The person letting the land is called the landlord, and the party to whom the lease is made, the tenant.⁹ If made for a term of years, it should be placed on record. Facts sufficient to put a purchaser upon inquiry are not sufficient to affect him with actual notice of an unrecorded instrument. The purchaser of property leased for a term of five or seven years, where the lease is not on record, are not sufficient to charge him with notice of a lease.¹⁰

§ 238. Wills.

§ 239. —In General.—A will is the legal declaration of a man's intentions of what he wills to be performed after his death. A holographic will is one written entirely by the testator, generally called “olographic.” An olographic will is derived from the civil law. It must be entirely written, dated and signed by the testator himself. No witnesses are necessary and it may be made anywhere. It is quite common in Louisiana and Spanish-American countries. A nuncupative will is an oral declaration by the testator, made before competent

⁷ Cyc. Law Dict.

Harsen, 7 Cow. (N. Y.) 323.

⁸ Cyc. Law Dict.

¹⁰ Toupin v. Peabody, 162 Mass.

⁹ Jackson *ex dem.* Webber v. 473, 39 N. E. 280.

witnesses, declaring his wishes regarding the disposal of his property.¹¹ Legatees are the persons mentioned in the will to whom bequests or devises are given.

§ 240. —**Codicils.**—A codicil is a clause added to the will after its execution, the purpose of which usually is to alter, enlarge or restrain the provisions of the will, or to explain, confirm and republish it.¹²

§ 241. —**Persons Who Can Devise; What May Be Devised.**—Ordinarily, any person of sound mind, of full legal age, capable of executing a valid contract can execute a will, and any lands, tenements and hereditaments, and personal estate owned by the testator, may be bequeathed or devised.

§ 242. —**Execution of Wills; Form.**—A will does not have to be in any special form, but is usually drawn in a certain orderly way. There is an introduction, stating that the testator does make, publish and declare the writing to be his last will, thereby revoking all previous wills, a direction to the executor to pay the funeral expenses and debts, an enumeration of the devises and bequests, a residuary clause providing for the disposal of the estate not specifically disposed of, a clause appointing an executor, and a conclusion stating that the testator affixes his name as of a certain date.¹³ The instrument is signed by the testator, or by some one in his presence and by his express direction, and is attested and subscribed to by credible witnesses, in the presence of the testator and each other, as required by the various statutory provisions. Such requirements must be complied with.¹⁴ A witness should not

¹¹ Cyc. Law Diet.

¹² *Lamb v. Lamb*, 11 Pick. (Mass.) 371.

¹³ *Bays' Commercial Law*, vol. 9, p. 166 *et seq.*

¹⁴ *Mendell v. Dunbar*, 169 Mass. 74, 47 N. E. 402, 61 Am. St. Rep. 277.

Compliance with the statute is all that is required. The testator may sign by a mark if he cannot write his name. It is not necessary that subscribing witnesses sign for him.

Scott v. Hawk, 107 Iowa 723, 77 N. W. 467, 70 Am. St. Rep. 228.

In the absence of any evidence of fraud, compulsion, or other improper conduct, a will may be signed by witnesses some distance away from the testator but within his sight. Soundness of mind is presumed unless sufficient evidence is established to prove otherwise. *In re Tobin*, 196 Ill. 484, 63 N. E. 1021.

be a devisee or legatee. Beneficiaries and trustees under a will are prohibited from testifying in its favor as against the heirs at law who are contesting it.¹⁵ A will cannot be corrected or reformed by a court of chancery. They have no power. The intention, which is to be sought for in the construction of a will, is not that which is expressed in the mind of the testator, but that which is expressed by the language of the will.¹⁶

§ 243. —**Executors and Administrators; Probate of Wills.**—An executor or executrix is appointed by the testator in his will to manage the estate. An administrator or administratrix is appointed by the court to manage the estate. Probate of a will is the proof made before a court or an officer appointed by law that the instrument offered is the last will and testament of the testator; upon sufficient proof, and security given, the officer issues letters testamentary.

§ 244. **Acknowledgments.**

§ 245. —**Definition.**—An acknowledgment is the act of one who has executed a deed, by going before some competent authorized officer or court, and declaring it to be his or her act or deed. The acknowledgment is certified by the officer or court, and the term is sometimes used to designate the certificate.¹⁷ It consists in an admission of the grantor that the deed is his own, and was given freely and for the purposes set forth in the deed.¹⁸

§ 246. —**Certificate of Acknowledgment.**—A certificate of acknowledgment is the officer's statement on a document which a party acknowledges. The officer states that on a certain day named the grantor, who was personally known, or proved to him by the testimony of a witness (giving name) to be the person described in and who executed the deed, personally appeared before him and acknowledged the instrument to be his free act and deed. He signs his name and affixes his

¹⁵ *In re Tobin*, 196 Ill. 484, 63 N. E. 1021.

¹⁶ *Engelthaler v. Engelthaler*, 196 Ill. 230, 63 N. E. 669.

¹⁷ *Cyc. Law Dict.*; *Bays' Commercial Law*, vol. 9, p. 147; *Bow-*

man v. Wettig, 39 Ill. 416; *Harrington v. Fish*, 10 Mich. 415.

¹⁸ The grantor must say and the certificate must show that he executed the deed. *Short v. Conlee*, 28 Ill. 219.

official seal by impressing it upon the instrument. The deed is then entitled to record. No officer shall take the acknowledgment of the execution of a deed unless he shall know, or have satisfactory evidence, that the person making the acknowledgment is the individual named in and who executed the conveyance. He is required to put his certificate upon the deed to that effect.¹⁹

§ 247. —**Necessity and Purpose.**—A deed may be effective between the parties without acknowledgment provided it was really delivered, but acknowledgment is always desirable and is necessary for certain purposes. In the first place, if a deed is properly acknowledged, a trumped up charge of fraud on the part of the grantor is difficult to sustain. Secondly, acknowledgment is necessary in most states, in order that the deed may be recorded and be effectual against third parties. Thirdly, dower and homestead rights cannot be waived in a deed unless it is acknowledged, and, in the fourth place, a deed which is properly acknowledged is said to prove itself, which means that it can go in as evidence without proof of its execution which would otherwise be necessary.²⁰ Deeds that have been acknowledged are seldom required to have witnesses, but deeds not so acknowledged and certified to are required to have witnesses in order to prove their authenticity or execution.²¹

Acknowledgment of sheriff's deed is essential to its validity for land sold by him under an execution. The property is conveyed against the will of the judgment debtor, the conveyance is not his act, but the act of law; and the law, when ac-

¹⁹ Fryer v. Rockefeller, 63 N. Y. 268.

²⁰ Bays' Commercial Law, vol. 9, p. 147.

A deed may be valid and binding on the parties who execute it, without any acknowledgment. The purpose of the certificate is to prove the execution, otherwise other proof may be resorted to to make it binding on the parties. Robinson v. Robinson, 116 Ill. 250, 5 N. E. 118.

As between the grantor and grantee a deed neither acknowledged nor recorded will pass the title. Galligher v. Connell, 46 Neb. 372, 64 N. W. 965; 35 Neb. 517, 53 N. W. 383; Harrison v. McWhirter, 12 Neb. 155, 10 N. W. 545.

²¹ Seaver v. Spink, 65 Ill. 441; Short v. Conlee, 28 Ill. 219; Harrington v. Fish, 10 Mich. 415.

See post, § 272 *et seq.*, Statutory Requirements.

knowledge is requisite, must be strictly complied with.²²

§ 248. —Nature of Taking of Acknowledgment; Care Required of Officers; Negligence.—While some courts have held the taking of an acknowledgment to be a judicial act,²³ the general opinion seems to be that such act is ministerial, rather than judicial.²⁴ The distinction is important in a legal sense as involving liability in case of negligence, because if an acknowledgment is considered as a judicial conclusion, no liability is incurred in case of unintended falsity.²⁵

As a general rule, in taking and certifying acknowledgments, a notary must exercise reasonable care, such as a reasonably prudent and competent man would exercise in the performance of such duty.²⁶ At the common law, a notary was bound to certify to acknowledgments with integrity because, by accepting the office, he contracted with every one who employed him to perform his duty with integrity, dili-

²² Warvelle on Abstracts (4th Ed.), § 275.

²³ "An officer who takes an acknowledgment (of the execution of a deed) acts in a judicial character in determining whether the person representing himself to be, or represented by some one else to be, the grantor named in the conveyance, actually is the grantor. He determines further whether the person thus adjudged to be the grantor does actually and truly acknowledge before him that he executed the instrument." *Wasson v. Connor*, 54 Miss. 352.

"It is well settled that the certificate * * * of the acknowledgment of a deed or mortgage is a judicial act." *Com. v. Haines*, 97 Pa. St. 228, 39 Am. Rep. 805.

²⁴ *Barnard v. Schuler*, 100 Minn. 289, 110 N. W. 966; *State Nat. Bank v. Mee*, 39 Okla. 775, 136 Pac. 758; *Ehlers v. United States Fidelity & Guaranty Co.*, 87 Wash. 662, 152 Pac. 518. See *In re*

Huron, 58 Kan. 152, 48 Pac. 574, 36 L. R. A. 822, 62 Am. St. Rep. 614; *Opinion of Justices*, 150 Mass. 586, 23 N. E. 850, 6 L. R. A. 842.

²⁵ Where a notary is considered an executive or ministerial officer, such officers are liable for wilful or negligent misconduct, but where the identity of a stranger may be proved to a notary by witnesses, as is permissible under the statutes of some states, the notary's certificate concerning the identity of the maker of an instrument is a judicial conclusion, similar to a judgment, and no liability is incurred in case of unintended falsity. See *Bellport v. Harkins*, 104 Kan. 543, 180 Pac. 220.

²⁶ *State v. Webber*, 177 Mo. App. 60, 164 S. W. 184; *Ehlers v. United States Fidelity & Guaranty Co.*, 87 Wash. 662, 152 Pac. 518. See also *Bellport v. Harkins*, 104 Kan. 543, 180 Pac. 220; *Baune v. Solheim*, 129 Minn. 221, 152 N. W. 267.

gence and skill.²⁷ This duty to certify acknowledgments with integrity exists under statutes authorizing notaries to take acknowledgments.²⁸ It arises also from the nature of the act, as it is obvious that the act of taking an acknowledgment is a matter of grave importance. Upon the fidelity with which this duty is discharged depends the title to real estate and the prevention of litigation. Great faith and credit is reposed in the certificates of notaries, and a corresponding duty is imposed on them to exercise care and caution in the performance of their duties.²⁹

The notary is not a guarantor of the absolute correctness of the certificate of acknowledgment, however, nor does he undertake to certify that the person acknowledging the instrument owns or has any interest in the lands described; but he does undertake to certify that the person personally appearing before him is known to him to be the person described in and who executed the instrument.³⁰ In rejecting the rule making the notary a guarantor of the truth of his certificate, the Supreme Court of one state said: "A notary public or other officer in taking an acknowledgment may be deceived, no matter how careful he may be in investigating the identity of a party who represents himself to be the person described in and who executed the instrument; and to hold such an officer absolutely liable in case it should afterwards appear that he was mistaken and his certificate was in fact untrue is too rigid a rule to be practical or just."³¹ Under other decisions the question as to whether a notary and his bondsmen are liable when an acknowledgment proves to be false has been held to depend upon whether the notary followed the statute, which prescribes what must be done. This really amounts to holding the notary as an insurer or guarantor as to the

²⁷ State v. Ogden, 187 Mo. App. 39, 172 S. W. 1172.

²⁸ Where notaries are authorized by statute to take acknowledgments, etc., and to certify under their official seals "concerning all matters by them done by virtue of their offices," and are required to give bond which "may be sued on by any person injured," the official

duty of a notary is not only to certify to acknowledgments, but to do so with integrity. State v. Ogden, 187 Mo. App. 39, 172 S. W. 1172.

²⁹ State v. Webber, 177 Mo. App. 60, 164 S. W. 184.

³⁰ Barnard v. Schuler, 100 Minn. 289, 110 N. W. 966.

³¹ Barnard v. Schuler, 100 Minn. 289, 110 N. W. 966.

truth of the certificate of identity of the person named in the acknowledgment, and that he was the person who appeared before him to acknowledge it.³²

It will be noted from the foregoing that while there is considerable conflict as to the extent of a notary's liability, such officers are held to a high degree of care in taking and certifying acknowledgments. It may be added that there is also considerable conflict in determining whether reasonable care has been exercised by notaries, when their acts become involved in litigation. The subject is so important as to require extended treatment in detail.

§ 249. —Essentials of Acknowledgments.—Two essentials of acknowledgments which are matters of substance and cannot be dispensed with are the matter of acknowledgment itself, and the identity of the party or parties making the acknowledgment. Defects in either of these matters will render the certificate void.³³ Careful performance of the notary's duties require certificates which are free from defects. While the two matters stated are the most important, other defects are sometimes considered fatal, and the certificate should fully comply with the statute in all details.

§ 250. —Necessity of Knowledge of Identity of Grantor or Person Appearing; Introductions.—Reasonable care in the performance of a notary's duties involves certainty of the identity of the person or persons making an acknowledgment. Such personal knowledge is one of the essentials of an acknowledgment.³⁴ A notary may only certify to the identity of a person with whom he is acquainted, and that acquaintance must be of sufficient duration and extent of familiarity that the notary has reasonable grounds upon which to base the recital in his certificate touching the identity of the person who appeared before him and acknowledged the execution of the instrument.³⁵ If the notary does not personally know the

³² *Brittain v. Monsur*, — Tex. Civ. App. —, 195 S. W. 911.

³³ *Warvelle on Abstracts* (4th Ed.), § 210.

³⁴ *Joost v. Craig*, 131 Cal. 504, 63 Pac. 840, 82 Am. St. Rep. 374; *Hayden v. Westcott*, 11 Conn. 129;

Hartshorn v. Dawson, 79 Ill. 108; *State v. Ryland*, 163 Mo. 280, 63 S. W. 819; *Smith v. Garden*, 28 Wis. 685.

³⁵ *Bellport v. Harkins*, 104 Kan. 543, 180 Pac. 220.

While a notary public is not a

party appearing before him, he should proceed with caution, and either decline to certify to the acknowledgment or investigate the question of the identity of the party with care and prudence as the gravity of the case demands, and only certify to his identity upon being clearly satisfied of the fact as a result of such investigation.³⁶ If a notary certifies to an acknowledgment without personal knowledge and investigation, he is guilty of negligence,³⁷ and he and his sureties are

guarantor or insurer of the identity of the person whose notarial acknowledgment he administers and certifies, he is bound, as all executive and ministerial officers are generally bound, to exercise reasonable diligence in the discharge of his official duties. Before certifying that a certain named person came before him and executed and acknowledged the execution of a deed, he must at least be reasonably sure of the identity of such person. *Bellport v. Harkins*, 104 Kan. 543, 180 Pac. 220.

An officer taking acknowledgment must be satisfied of the identity of person who executed the instrument. *In re H — C —, Jr.*, 81 N. J. Eq. 8, 85 Atl. 336.

³⁶ *Barnard v. Schuler*, 100 Minn. 289, 110 N. W. 966; *State v. Weber*, 177 Mo. App. 60, 164 S. W. 184; *State v. Meyer*, 2 Mo. App. 413.

"A notary is not justified in taking an acknowledgment and making a notarial certificate for a stranger who comes into his office and says: 'My name is John Smith. I want to acknowledge a deed and have you make your notarial certificate to it.' Such official conduct on the part of the notary would be grossly negligent, and he would undoubtedly be liable

in damages to any person who suffered loss through reliance on the purported facts negligently and falsely recited in such notarial certificate." *Dawson, J., in Bellport v. Harkins*, 104 Kan. 543, 180 Pac. 220.

"When a man appears before an officer, introduces himself, produces an instrument which he says he desires to execute, if then the officer takes and certifies an acknowledgment, certifies that he is satisfied that a perfect stranger is the identical grantor named in the instrument, he solemnly certifies to an untruth, and should be deprived of his office, or otherwise appropriately punished." *In re H — C —, Jr.*, 81 N. J. Eq. 8, 85 Atl. 336.

³⁷ *Barnard v. Schuler*, 100 Minn. 289, 110 N. W. 966; *State Nat. Bank v. Mee*, 39 Okla. 775, 136 Pac. 758.

Where a person impersonated an owner of land, and requested the acknowledgment of a deed prepared by an attorney, and the notary by mistake certified the instrument, thinking that he was acquainted with the man, the act was characterized as "gross negligence." *Peterson v. Mahon*, 27 N. D. 92, 145 N. W. 596. See *Baune v. Solheim*, 129 Minn. 221, 152 N. W. 267 (where a woman

liable for all damages proximately resulting therefrom.³⁸ In such cases, where there is a specific act of negligence, it is immaterial and of no importance that the notary was ordinarily careful.³⁹ A notary who takes an acknowledgment to a deed executed in blank by an impostor will not be permitted to escape liability because the name of the grantee was omitted.⁴⁰

A notary public is also guilty of negligence if he certifies that he knows a person who is merely introduced to him, and there is no further proof or inquiry as to his identity,⁴¹ or, at least, such conduct raises a question of fact as to whether the notary was reasonably careful.⁴² In a case where a notary was induced to take the acknowledgment of a man unknown to him, being induced to do so by the fact that he was introduced to the man by a member of a commission firm of previous good standing, which commission firm was the payee of a chattel mortgage and note, it could not be contended subsequently that there was no negligence on the part of the notary. When the notary certified that such person, naming him, was the person who acknowledged the execution of the instrument involved, he had to personally know at his peril that the person introduced was the person named.⁴³

impersonated a grantor's wife, and the verdict acquitted the notary of negligence).

³⁸ *Barnard v. Schuler*, 100 Minn. 289, 110 N. W. 966.

³⁹ *Kangley v. Rogers*, 85 Wash. 250, 147 Pac. 898.

⁴⁰ *Bellport v. Harkins*, 104 Kan. 543, 180 Pac. 220.

⁴¹ *State Nat. Bank v. Mee*, 39 Okla. 775, 136 Pac. 758. See also *Joost v. Craig*, 131 Cal. 504, 63 Pac. 840, 82 Am. St. Rep. 374.

⁴² Where an acknowledgment is taken upon a mere introduction without further proof, and damages result, the question whether the notary exercised reasonable care and diligence is for the jury. *Com. v. Johnson*, 123 Ky. 437, 96 S. W. 801, 124 Am. St. Rep. 368,

13 Ann. Cas. 716; *Ehlers v. United States Fidelity & Guaranty Co.*, 87 Wash. 662, 152 Pac. 518.

⁴³ *State v. Farmer* (Mo. App.), 201 S. W. 955.

Where a live stock commission firm sold a note secured by a chattel mortgage, purporting to be executed by another, and it later appeared that such other person did not exist, and that the cattle secured by the mortgage did not exist, and it appeared that the notary was negligent in that she did not know the man who acknowledged the instrument, and accepted an introduction of a member of the commission firm to such man, the act of the notary was not the proximate cause of the loss, and the notary and bonds-

§ 251. —**False Certificates.**—The making of a false certificate of acknowledgment is a breach of the notary's bond, subjecting him and his sureties to liability, in case of injury.⁴⁴ It may also result in criminal proceedings,⁴⁵ the imposition of penalties, or removal of the officer.⁴⁶ The officer has no right to certify anything that he does not know,⁴⁷ and a person has the right to rely upon a notary's certificate as true, and that

men were liable only for nominal damages. *State v. Packard*, 199 Mo. App. 53, 201 S. W. 953; *State v. Farmer* (Mo. App.), 201 S. W. 955. But see *State v. Ryland*, 163 Mo. 280, 63 S. W. 819; *State v. Grundon*, 90 Mo. App. 266; *State v. Balmer*, 77 Mo. App. 463; *State v. Meyer*, 2 Mo. App. 413, where the property was in fact owned by the person who the notary negligently and untruly certified had acknowledged the instrument, and where the notary's act proximately caused the loss, so that he and his sureties were liable.

Where a notary was induced to take the acknowledgment of a man unknown to him, but introduced by a commission merchant, who was the payee of a note and a chattel mortgage, which the notary acknowledged, the notary and his bondsmen could not subsequently contend that the payee named was estopped from claiming damages because of the false certificate, and that such estoppel extended to others to whom the mortgage and note were indorsed, as the note was a negotiable instrument, and the notary's certificate was not to the payees of the mortgage alone, but to all the world who might choose to take the papers in the course of business. *State v. Farmer* (Mo. App.), 201 S. W. 955.

⁴⁴ *Kleinpeter v. Castro*, 11 Cal. App. 83, 103 Pac. 1090; *Wilson v. Gribben*, 152 Iowa 379, 132 N. W. 849; *State v. Ogden*, 187 Mo. App. 39, 172 S. W. 1172; *State v. Webber*, 177 Mo. App. 60, 164 S. W. 184.

A notary and his sureties are liable for the making of a false certificate whether such certificate is valid or invalid if made in apparent conformity to legally constituted authority but in excess or perversion thereof, and an injury results therefrom, because in such case the act is done by color of the office. *State v. Ogden*, 187 Mo. App. 39, 172 S. W. 1172.

Where a notary forged a deed of trust and note, and fraudulently certified to a false acknowledgment, and a person in reliance thereon parted with his money, after seeing that the deed of trust was acknowledged, the fraudulent certificate was the proximate cause of the loss, even though the certificate was only one of the causes which induced the person to loan money, and the notary and his sureties were liable. *State v. Ogden*, 187 Mo. App. 39, 172 S. W. 1172.

⁴⁵ See *People v. Marrin*, 205 N. Y. 275, 98 N. E. 474, 43 L. R. A. (N. S.) 754.

⁴⁶ See ante, §§ 31-34.

⁴⁷ *Fisher v. Meister*, 24 Mich. 447.

the persons therein mentioned appeared before the notary and acknowledged the instrument. There is no obligation to go out and verify the statements of the notary, and there can be no contributory negligence in relying on such statement.⁴⁸

§ 252. —Necessity of Personal Appearance of Person Acknowledging.—Notaries public, in the performance of their duties, and particularly in the taking of acknowledgments, continually meet persons, who do not understand the significance and importance of the taking of acknowledgments, and the performance of similar duties. Thus notaries are frequently invited to fill in acknowledgments, or to certify to facts, and even take affidavits, without the appearance of the subscriber before them. Frequently such invitations are from business men who regard the formalities of the law as a species of "red tape" and who, because of being busy men, do not want to take the time to fully comply with the law. But the conscientious, wise notary will steadfastly adhere to the strict performance of his duties, and will not succumb to the temptations offered in this respect. It will be apparent after thought, that if notaries are careless of the person appearing before them, the door is open to innumerable frauds, and the notary may be subjected to serious damage suits, if not penalties, as well as to the disgrace of having his commission revoked. In the majority of the states, the certificate of acknowledgment states that the subscriber "personally appeared" before the notary and acknowledged the instrument. By calling attention to these words, the notary can usually satisfy his client that the law demands such appearance, and avoid argument.

Certifying to a person being present, when he or she is absent, is negligence, rendering the notary liable on his bond as for a false certificate.⁴⁹ Such conduct is also to be con-

⁴⁸ State v. Ogden, 187 Mo. App. 39, 172 S. W. 1172.

⁴⁹ State v. Hallen (Mo. App.), 196 S. W. 1067; State v. Hallen, 165 Mo. App. 422, 146 S. W. 1171; Kangley v. Rogers, 85 Wash. 250, 147 Pac. 898.

Certifying when the party has not appeared before him or when he has not read the instrument is a misfeasance and renders him liable. People ex rel. Curtiss v. Colby, 39 Mich. 456.

demned and treated as serious professional misconduct.⁵⁰

§ 253. —**Taking Acknowledgments by Telephone.**—In connection with the necessity of appearance of a subscriber before the notary are the cases where the notary is invited to take the acknowledgment of persons over the telephone. And it may be stated in general that most of such cases are where the acknowledgment to be taken is that of a married woman. In this connection the authorities differ as to the validity of such an acknowledgment. By applying the principal that an acknowledgment is conclusive as to the facts therein stated, except in cases of fraud, mistake or duress, such an acknowledgment has been held valid.⁵¹ But in some states the privy examination of a married woman is required to render the deed valid, when she joins with her husband. Such examination must be private and apart from the husband, and a personal interview with the married woman is necessary, so that the officer can determine if the deed is freely and voluntarily acknowledged. Such a privy examination conducted over the telephone has been held a mere empty form, and of no effect.⁵²

§ 254. —**Acknowledgments of Married Women; Private Examination.**—The formalities attending the acknowledgment of married women's conveyances now differ in no material respect from other deeds, though formerly they involved no little circumlocution and ceremony. It was, and in some states is yet, customary to make a personal examination of the wife, apart from her husband, in which the contents and nature of the instrument must be made known to her, and upon such examination she is required to make a "free and voluntary" acknowledgment without "fear or compulsion" and to further state that she does not wish to retract; that she resigns her dower, waives her homestead rights, etc. Where such is the law, the courts have usually exacted a strict and literal compliance with the statutory provisions,

⁵⁰ *In re Napolis*, 169 N. Y. App. Div. 469, 155 N. Y. Supp. 416.

⁵¹ *Banning v. Banning*, 80 Cal. 271, 22 Pac. 210, 13 Am. St. Rep. 156.

⁵² *Wester v. Hurt*, 123 Tenn. 508, 130 S. W. 842, 30 L. R. A. (N. S.) 358, Ann. Cas. 1912 C 329.

and material departures or omissions have been held to vitiate the conveyance.⁵³

§ 255. —**Necessity of Conformity with Statutory Provisions.**—Since the office of an acknowledgment is to authenticate the deed, it must conform to, or substantially follow, the directions of the statute, in order to be effective. Such conformity extends to the certifying officer and the form and substance of the certificate. The certificate is not a part of the deed, however, and should be reasonably construed. Accordingly, minor defects may be disregarded and substantial compliance with the statute is all that is required.⁵⁴

§ 256. —**Place for Certificate of Acknowledgment on Instrument.**—Printed forms of instruments are frequently used, the entire contract or deed being on one sheet, and a place for acknowledgment being provided. In other cases, the certificate of acknowledgment should follow the ending and signatures affixed to the main instrument. It has been held that the acknowledgment must be on the same sheet as the deed, unless the second sheet contains the testatum clause.⁵⁵

§ 257. —**What Officers May Take Acknowledgments.**—The statutes usually enumerate what officers may take acknowledgments, and such directions are final. If a special class of

⁵³ Warvelle on Abstracts (4th Ed.), § 245.

In Illinois, formerly it was essential that in a deed conveying the wife's estate the certificate of acknowledgment should state that she was examined separate and apart from her husband and that the contents of the deed were made known and explained to her. Failing to so state made the deed as to her and her heirs void. *Mettler v. Miller*, 129 Ill. 630, 22 N. E. 529.

The provision of the law authorizing certain officers to take the private examination of the wife was designed as a substitute for the proceeding at common law by fine and recovery, whereby the

rights of the wife, on the one hand, might be guarded, and a sure, unquestionable transfer of her right secured on the other. *Kerr v. Russell*, 69 Ill. 666, 18 Am. Rep. 634.

In Tennessee, a wife may convey her separate estate without the husband joining, but the privy examination is necessary in either case. See post, § 272 *et seq.*, Statutory Requirements. *Robinson v. Queen*, 87 Tenn. 445, 11 S. W. 38, 3 L. R. A. 214, 10 Am. St. Rep. 690.

⁵⁴ Warvelle on Abstracts (4th Ed.), § 209.

⁵⁵ *Winkler v. Higgins*, 9 Ohio St. 599.

officers selected by the Legislature are intrusted with this duty, and such class does not include notaries, the taking of an acknowledgment by a notary is of no effect. And if the certificate recites the act by the notary, it is immaterial that such notary was also a commissioner of deeds, and as such authorized by statute to act.⁵⁶ Notaries who hold themselves out to take acknowledgments must be properly qualified and commissioned, although the acts of *de facto* notaries are usually upheld.⁵⁷ An acknowledgment taken by a notary whose commission has expired has been held insufficient.⁵⁸

§ 258. —Place of Acknowledgment; Jurisdiction of Officer.

—A certificate of acknowledgment should show the place of acknowledgment, by reciting the state and county.⁵⁹ Omissions in this respect are usually not treated as matters of substance, and are not held fatal, or the omission of the county in the venue may be cured by the certificate of conformity, or by the seal. In Iowa, however, such an omission has been held fatal, and the seal could not cure the defect.⁶⁰ Some states permit a notary to take acknowledgments to deeds anywhere within the state.⁶¹ A deed executed out of the state is properly

⁵⁶ Partridge v. Mechanics' Nat. Bank of Burlington, 77 N. J. Eq. 208, 77 Atl. 410. Deed must be acknowledged before officers named. Charleroi Timber & Canal Coal Co. v. Licking Coal & Lumber Co. (Ky.), 116 S. W. 682.

What officers may take acknowledgments, see post, § 272 *et seq.*, Statutory Requirements.

A clerk of the United States courts may take acknowledgments in Illinois. Woodruff v. McHarry, 56 Ill. 218.

⁵⁷ Ante, § 16.

⁵⁸ Lambert v. Murray, 52 Colo. 156, 120 Pac. 415.

Disqualification of notaries to take acknowledgments, see post, § 267.

⁵⁹ See ante, § 17.

⁶⁰ Warvelle on Abstracts (4th Ed.), § 210; Reeves & Co. v. Co-

lumbia Sav. Bank, 166 Iowa 411, 147 N. W. 879.

A certificate must contain some assignable locality, which the court can judicially notice in order to render the deed admissible as evidence without proof of its execution; and a notarial seal will not cure the defect. Vance v. Schuyler, 1 Gilm. (Ill.) 160.

⁶¹ Guertin v. Mombleau, 144 Ill. 32, 33 N. E. 49; Oppenheimer v. Giershofer, 54 Ill. App. 39.

While it is proper for the notary to sign himself a notary public in and for the county for which he is appointed, his certificate of acknowledgment is not fatally defective if his county is omitted. Sullivan v. Hall, 86 Mich. 7, 48 N. W. 646, 13 L. R. A. 556.

acknowledged if executed according to the laws of the state where the execution takes place.⁶² It must appear that the officer making the certificate is an officer of the state within which the acknowledgment is made, and that he is acting under and by authority of its laws.⁶³

§ 259. —**Clerical Errors in Statement of Fact of Acknowledgment.**—Clerical errors in certificates of acknowledgment are unfortunately most common. Printed forms of the certificate are used frequently and the notary accidentally or carelessly fills out the blanks improperly or neglects to fill them out. Later serious questions arise. If the instrument is recorded, the defects are discovered when the abstract of title is examined, and additional expense and trouble are required to correct the matter. Sometimes the question is involved in litigation. As a general rule the courts are inclined to construe this class of errors most liberally, but there is danger that an apparently small defect may be a matter of substance. As an illustration, in most printed forms the recital of acknowledgment reads “and acknowledged that —he— signed, executed,” etc., the purpose of the labor saving device being to allow the blanks before and after the word “he” to be filled by letters that shall make the words “she” or “they” as the case may require. Carelessness or ignorance frequently causes the instrument to go forth with the blank space not properly filled out, and with an ambiguous recital of one of the essential facts of acknowledgment. In the case of a joint acknowledgment by a husband and wife, the certificate will state that the parties appeared before the officer and acknowledged that “he” the husband executed the instrument. May not such an error be a matter of substance? In another certificate, the recital stated that the husband and wife, “who — personally known to me,” appeared, etc., omitting the word “are,” and the court held that the word “who” might be disregarded as surplusage. The general rule seems to be that the courts will disregard obvious mistakes and read into the

⁶² Keller v. Moore, 51 Ala. 340; Summer v. Mitchell, 29 Fla. 179, 10 So. 562, 14 L. R. A. 815, 30 Am. St. Rep. 106; Esker v. Hefernan, 159 Ill. 38, 41 N. E. 1113;

Post v. First Nat. Bank of Springfield, 138 Ill. 559, 28 N. E. 978; Slaughter v. Bernards, 88 Wis. 111, 59 N. W. 576.

⁶³ Final v. Backus, 18 Mich. 218.

certificate the proper word if it can be easily ascertained,⁶⁴ but the liberality of the courts in this respect should not excuse the notary. Holding himself out to the world as competent to perform his duties, the notary should be most careful, in preparing and certifying acknowledgments.

A defect of frequent occurrence will be found in disparity of dates, as where the date of a deed is subsequent to the date of acknowledgment. Errors in this respect are usually considered clerical mistakes, and while they should be noted in the examination of abstracts, are usually considered of minor importance.⁶⁵

§ 260. —Signature of Officers; Designation of Official Character.—The notary's signature should be properly written and affixed.⁶⁶ A notary's seal attached to the acknowledgment of a deed without the notary's signature cannot be received as evidence of the execution of the deed.⁶⁷ The failure to file the notary's autograph signature in the office of a register of a county, as required by statute, has been held an irregularity, not invalidating an acknowledgment.⁶⁸

Officers certifying must give their official title, or the certificate is fatally defective.⁶⁹ If the title is given in full in the body of the certificate, its omission from the signature is immaterial,⁷⁰ and the omission of the official character in the

⁶⁴ Warvelle on Abstracts (4th Ed.), § 209.

The policy of the law is to uphold all certificates of acknowledgment; where substance is found, mere clerical errors and technical omissions are disregarded. *Summer v. Mitchell*, 29 Fla. 179, 10 So. 562, 14 L. R. A. 815, 30 Am. St. Rep. 106; *Douglass v. Bishop*, 45 Kan. 200, 25 Pac. 628, 10 L. R. A. 857.

⁶⁵ Warvelle on Abstracts (4th Ed.), § 209.

⁶⁶ Ante, § 24. See *Lake v. Earnest*, 53 Tex. Civ. App. 555, 116 S. W. 865.

⁶⁷ *Clark v. Wilson*, 27 Ill. App. 610, aff'd 127 Ill. 449, 19 N. E.

860, 11 Am. St. Rep. 143; *Foster v. Latham*, 21 Ill. App. 165.

⁶⁸ *In re Townsend*, 195 N. Y. 214, 88 N. E. 41, 22 L. R. A. (N. S.) 194, 16 Ann. Cas. 921.

⁶⁹ Warvelle's Abstracts (4th Ed.), sec. 210; *Clark v. Wilson*, 27 Ill. App. 610, aff'd 127 Ill. 449, 19 N. E. 860, 11 Am. St. Rep. 143; *Hout v. Hout*, 20 Ohio St. 119; *Cassell v. Cooke*, 8 Serg. & R. (Pa.) 268.

⁷⁰ *Summer v. Mitchell*, 29 Fla. 179, 10 So. 562, 14 L. R. A. 815, 30 Am. St. Rep. 106. See *Duckworth v. Watsonville Water & Light Co.*, 150 Cal. 520, 89 Pac. 338.

A certificate of acknowledgment of a deed or certificate of a notary,

body of the instrument will not invalidate the certificate, when the instrument is signed by the officer with the initials "N. P." following,⁷¹ or with the proper designation of the official. In some states, the name of the county is an essential part of the title of the notary, and must be stated.⁷² As a general rule, whenever a certifying officer is required to have a seal, he must authenticate his certificate under his official seal,⁷³ and the notary's seal should be attached to all acknowledgments taken by them.⁷⁴ The official seal attached to an acknowledgment imparts verity and that the act is official and not individual.⁷⁵ No seal is necessary to certificates of acknowledgment unless the statutes expressly require it,⁷⁶ and in some states the seal is unnecessary.⁷⁷ No objection having been made, when the deed was put in evidence, that the official seal of the notary did not appear on the certificate of acknowledgment, the objection will be regarded as having been waived.⁷⁸

§ 261. —Amendment or Correction of Certificate.—An officer having taken an acknowledgment of a deed, and made a certificate thereof, cannot as a general rule afterwards amend or change his certificate for the purpose of correcting a mistake. This can only be done by the parties reacknowledging the

or other officer, stating in its body the officer's official character, it is useless and unnecessary to again certify it by full designation following the signature. *Heffernan v. Harvey*, 41 W. Va. 766, 24 S. E. 592.

⁷¹ *Worley v. Adams*, 111 Va. 796, 69 S. E. 929.

⁷² *Reeves & Co. v. Columbia Sav. Bank*, 166 Iowa 411, 147 N. W. 879.

⁷³ *Warvelle on Abstracts* (4th Ed.), § 210.

⁷⁴ *Dyer v. Flint*, 21 Ill. 80, 74 Am. Dec. 73.

At common law, notary was simply a commercial officer and his official acts were known only by his official seal. *Dawsey v. Kir-*

ven, 203 Ala. 446, 83 So. 338, 7 A. L. R. 1658.

⁷⁵ *Moore v. Titman*, 33 Ill. 358.

⁷⁶ *Thompson v. Morgan*, 6 Minn. 292 (Gil. 199); *Baze v. Arper*, 6 Minn. 220 (Gil. 142).

It is within the legislative power to enact, as to future contracts, that the same shall not be binding or effective in any way without a seal or without an acknowledgment of a specific kind or without being recorded. Statutes simply prescribe what shall be essential to constitute a valid contract. *Parrott v. Kumpf*, 102 Ill. 423.

⁷⁷ *Dawsey v. Kirven*, 203 Ala. 446, 83 So. 338, 7 A. L. R. 1658.

⁷⁸ *Baker v. Baker*, 159 Ill. 394, 42 N. E. 867.

deed.⁷⁹ The same is true if the deed had been delivered.⁸⁰

§ 262. —**Acknowledgments as Evidence.**—The certificate of acknowledgment of a notary or consul is prima facie evidence of their official character.⁸¹ In taking acknowledgments, an officer acts under the sanction of his official oath, and his certificate, required by law to be made, should be regarded as high a grade of evidence as if given under oath.⁸²

§ 263. —**Probate of Deed.**—In Tennessee a deed cannot be probated before a notary public by subscribing witnesses; his duty is to take acknowledgments and the proof by witnesses must be made before the clerk of the county court.⁸³

§ 264. Acknowledgments of Particular Instruments.

§ 265. —**Chattel Mortgages.**—Acknowledgment of chattel mortgages by a notary of another state is conferred by the force and vigor of the Illinois statutes when the mortgagor resides in such state, as well as in cases of real estate conveyances.⁸⁴ The omission to state the county in an acknowledgment to a chattel mortgage taken before a justice of the peace is immaterial when it is perfectly certain that the acknowledgment was taken by a justice of the peace in and for a town of which the court has judicial knowledge to be in the proper county.⁸⁵

§ 266. —**Town Plats.**—While a town plat, imperfectly acknowledged, fails to convey the fee, it is evidence tending to

⁷⁹ *Merritt v. Yates*, 71 Ill. 636, 23 Am. Rep. 128.

⁸⁰ *Griffith v. Ventress*, 91 Ala. 366, 8 So. 312, 11 L. R. A. 193, 24 Am. St. Rep. 918.

Where no certificate of acknowledgment was made by a mortgagor or his wife, and the mortgage was delivered, and seven days later a certificate was attached, in due form, the certificate was unauthorized as the notary could not make such certificate without recalling the parties. *Alford v. Doe ex dem. First Nat. Bank of Gadsden*, 156

Ala. 438, 47 So. 230, 22 L. R. A. (N. S.) 216.

⁸¹ *Mott v. Smith*, 16 Cal. 534. A notary's certificate is evidence of the facts therein stated. *State v. Ogden*, 187 Mo. App. 39, 172 S. W. 1172.

⁸² *Warrick v. Hull*, 102 Ill. 280.

⁸³ *McGuire v. Gallagher*, 95 Tenn. 349, 32 S. W. 209.

⁸⁴ *Hewitt v. Watertown Steam Engine Co.*, 65 Ill. App. 153.

⁸⁵ *Gilbert v. National Cash Register Co.*, 67 Ill. App. 606.

prove a common-law dedication, which vests an easement in the streets and alleys in the municipality.⁸⁶

§ 267. Impeachment of Certificates of Acknowledgment.—Certificates of acknowledgment may usually be impeached only for fraud, conspiracy, collusion or imposition,⁸⁷ and clear, convincing and satisfactory proof is required.⁸⁸ Some courts require proof that the grantee had knowledge of the fraud, and that there was collusion with the notary.⁸⁹ In the absence of fraud or collusion, the certificate of the officer taking the acknowledgment is essential to full credit.⁹⁰

The evidence of the officer who takes an acknowledgment of a chattel mortgage is competent for the purpose of impeaching his official certificate.⁹¹

§ 268. Disqualification of Notaries to Take Acknowledgments.

§ 269. —In General.—The relationship or interest which will disqualify a notary from taking an acknowledgment must be determined from the facts of each case,⁹² and usually mere relationship without anything else is not a disqualification.⁹³ If the notary is a party or financially interested in the conveyance, he is disqualified from acting,⁹⁴ and conversely, if the

⁸⁶ Gould v. Howe, 131 Ill. 490, 23 N. E. 602.

⁸⁷ Warriek v. Hull, 102 Ill. 280; Fitzgerald v. Fitzgerald, 100 Ill. 385; Mahan v. Schroeder, 142 Ill. App. 538; O'Donnell v. Kelliher, 62 Ill. App. 641.

The acknowledgment of a deed cannot be impeached for anything but fraud. Ogden Building & Loan Ass'n v. Mensch, 196 Ill. 554, 63 N. E. 1049, 89 Am. St. Rep. 330. See ante, § 28.

⁸⁸ Sheridan County v. McKinney, 79 Neb. 223, 115 N. W. 548.

⁸⁹ Evart v. Dalrymple, — Tex. Civ. App. —, 131 S. W. 223.

⁹⁰ Calumet & C. Canal & Dock Co. v. Russell, 68 Ill. 426; Lickmon v. Harding, 65 Ill. 505.

⁹¹ McCurley v. Pitner, 65 Ill. App. 17.

See ante, § 26.

⁹² See ante, § 21.

⁹³ Hinton v. Hall, 166 N. C. 477, 82 S. E. 847 (brother-in-law of mortgagee not disqualified).

⁹⁴ Herbach v. Tyrrell, 48 Neb. 514, 67 N. W. 485, 489, 37 L. R. A. 434; Watts v. Whetstone, 79 S. C. 357, 60 S. E. 703; W. C. Belcher Land Mortg. Co. v. Taylor, — Tex. Civ. App. —, 173 S. W. 278; Roane v. Murphy, — Tex. Civ. App. —, 96 S. W. 782. See Kothe v. Krag-Reynolds Co., 20 Ind. App. 293, 50 N. E. 594, citing Green v. Abraham, 43 Ark. 420; Hogans v. Caruth, 18 Fla. 587; Hammers v. Dole, 61 Ill. 307.

notary is not financially interested, he is not disqualified from acting, even though he is an employee of a party,⁹⁵ an agent or attorney.⁹⁶

§ 270. —**Stockholders.**—It is generally held that the interest of a stockholder in a corporation disqualifies him from taking an acknowledgment where the corporation is a party to the instrument.⁹⁷ In some jurisdictions the contrary rule prevails, the act being held ministerial instead of judicial.⁹⁸ In Arkansas it is held that an acknowledgment taken by a stock-

A trustee named in a deed of trust is incompetent to take the acknowledgment of the grantor. *Kothe v. Krag-Reynolds Co.*, 20 Ind. App. 293, 50 N. E. 594, citing *Stevens v. Hampton*, 46 Mo. 404; *Tavener v. Barrett*, 21 W. Va. 656.

⁹⁵ Notary who is employee of grantee but who has no interest in property, is not disqualified to take acknowledgment. *Smith v. Ayden Lumber Co.*, 144 N. C. 47, 56 S. E. 555.

⁹⁶ *Vizard v. Robinson*, 181 Ala. 349, 61 So. 959; *Nichols v. Howson*, 94 Ark. 241, 126 S. W. 830; contra, *Forest Oil Co. v. Wilson*, — Tex. Civ. App. —, 178 S. W. 626.

Agent and attorney of vendee employed to purchase timber is not disqualified as notary to take grantor's acknowledgment of deed. *Vizard v. Robinson*, 181 Ala. 349, 61 So. 959.

A notary who is an attorney is not disqualified from taking an acknowledgment of a mortgage made to his client merely because he holds for collection the claim secured by such mortgage, it not appearing that he has any beneficial interest in the mortgage, nor

that the amount of his compensation in any manner depended upon such mortgage. *Havemeyer v. Dahn*, 48 Neb. 536, 67 N. W. 489, 33 L. R. A. 332, 58 Am. St. Rep. 706.

⁹⁷ *Hayes v. Southern Home Building & Loan Ass'n*, 124 Ala. 663, 26 So. 527, 82 Am. St. Rep. 216; *Southern Iron & Equipment Co. v. Voyles*, 138 Ga. 258, 75 S. E. 248, 41 L. R. A. (N. S.) 375, Ann. Cas. 1913 D 369; *Ogden Building & Loan Ass'n v. Mensch*, 196 Ill. 554, 63 N. E. 1049, 89 Am. St. Rep. 330; *Kothe v. Krag-Reynolds Co.*, 20 Ind. App. 293, 50 N. E. 594; *Smith v. Clark*, 100 Iowa 605, 69 N. W. 1011; *Girard Trust Co. v. Null*, 90 Neb. 713, 134 N. W. 272; *Boswell v. First Nat. Bank of Laramie*, 16 Wyo. 161, 92 Pac. 624, 93 Pac. 661; *Fletcher's Cyc. Corp.*, § 1489; 1 Devlin, *Real Estate* (3rd Ed.), § 477b *et seq.*

⁹⁸ *First Nat. Bank of Riverside v. Merrill*, 167 Cal. 392, 139 Pac. 1066; *Babbitt v. Bent County Bank*, 50 Colo. 258, 108 Pac. 1003; *Read v. Toledo Loan Co.*, 68 Ohio St. 280, 67 N. E. 729, 62 L. R. A. 790, 96 Am. St. Rep. 663; *Kee v. Ewing*, 17 Okla. 410, 87 Pac. 297; *Keene Guaranty Sav. Bank v. Lawrence*, 32 Wash. 572, 73 Pac. 680.

holder is not void where there is no fraud, coercion or undue advantage taken of the other parties executing the instrument,⁹⁹ and this is also the rule in Tennessee.¹ In a number of states, statutes have been enacted governing the matter.²

§ 271. —**Officers of Corporations.**—The reason that an officer who is also a stockholder of a corporation is disqualified from taking an acknowledgment of a conveyance to such corporation is based upon the principle that he has a pecuniary interest in the conveyance. If he has no such pecuniary interest, the principle, naturally, does not apply.³ Hence, unless it is otherwise provided by statute,⁴ an officer or agent of a corporation, at least if he is not a stockholder, may take the acknowledgment of an instrument to which the corporation is a party,⁵ and there is no presumption that an officer of a corporation is a stockholder.⁶ An acknowledgment is void when taken by an officer who is disqualified to act, or who is a party in interest.⁷

⁹⁹ *Davis v. Hale*, 114 Ark. 426, 170 S. W. 99, Ann. Cas. 1916 D, 701.

¹ *Cooper v. Hamilton Perpetual Building & Loan Ass'n*, 97 Tenn. 285, 37 S. W. 12, 33 L. R. A. 338, 56 Am. St. 795.

² Post, § 272 *et seq.*, Statutory Requirements.

³ See 1 Devlin, Real Estate (3rd Ed.), § 477h.

⁴ *Kothe v. Krag-Reynolds Co.*, 20 Ind. App. 293, 50 N. E. 594 (where statute forbids), citing *Florida Sav. Bank & Real Estate Exch. v. Rivers*, 36 Fla. 575, 18 So. 850; *Smith v. Clark*, 100 Iowa 605, 69 N. W. 1011.

⁵ *Bank of Woodland v. Oberhaus*, 125 Cal. 320, 57 Pac. 1070; *Florida Sav. Bank & Real Estate Exchange v. Rivers*, 36 Fla. 575, 18 So. 850; *Ogden Building & Loan Ass'n v. Mensch*, 196 Ill. 554, 63 N. E. 1049,

89 Am. St. Rep. 330; *Sawyer v. Cox*, 63 Ill. 130; *Bardsley v. German-American Bank*, 113 Iowa 216, 84 N. W. 1041; *Horbach v. Tyrrell*, 48 Neb. 514, 67 N. W. 485, 489, 37 L. R. A. 434; *Keene Guaranty Sav. Bank v. Lawrence*, 32 Wash. 572, 73 Pac. 680; *Fletcher's Cyc. Corp.*, § 1490.

⁶ *Florida Sav. Bank & Real Estate Exchange v. Rivers*, 36 Fla. 575, 18 So. 850; *Horbach v. Tyrrell*, 48 Neb. 514, 67 N. W. 485, 489, 37 L. R. A. 434.

⁷ *Kothe v. Krag-Reynolds Co.*, 20 Ind. App. 293, 50 N. E. 594, citing *Hubble v. Wright*, 23 Ind. 323; *Bowden v. Parish*, 86 Va. 67, 9 S. E. 616, 19 Am. St. Rep. 873, and others; *Farmers' & Merchants' Bank v. Stockdale*, 121 Iowa 748, 96 N. W. 732. (Oct. 8, 1903), 18 Chicago Law Jour. 611.

STATUTORY REQUIREMENTS.

§ 272. **Alabama**—**ACKNOWLEDGMENTS—IN THE STATE**—taken before judges of the supreme and circuit courts, clerks of such courts, chancellors, registers in chancery, probate judges, justices of the peace, notaries. **OUTSIDE THE STATE**—taken before federal judges, and clerks, judges of courts of record, notaries and commissioners. **OUTSIDE THE UNITED STATES**—taken before judges of courts of record, mayors, chief magistrates of any city, town, borough, or county, notaries, any diplomatic, consular or commercial agent of the United States. **PERSONALLY KNOWN**—must be personally known or proved to officer. Conveyances may be made by any person of legal capacity over twenty-one years of age. Trust estates permitted when legal title rests in trustee. Record of deeds required. **WOMEN**—wife cannot alienate or mortgage without husband joining. Separate examination of wife required when acknowledging conveyance of homestead. Dower released by joining with husband, or by power of attorney. Homestead may be waived by separate instrument, witnessed or acknowledged. **WITNESSES**—one witness required to conveyance; two if grantor cannot write. Acknowledgment dispenses with necessity of witnesses, but conveyance must be proved and acknowledged to be recorded. **POWER OF ATTORNEY**—acknowledged same as deeds. **LIMITATION OF ACTIONS**—to recover land, ten years; redemption of mortgage, two years; tax sale redemption, two years; judgment liens, two years. Continuance of judgment lien limited to ten years.

§ 273. **Alaska**—**ACKNOWLEDGMENTS—IN THE TERRITORY**—before any judge, clerk of the district court, notary, or commissioner, within the district. Officer must indorse his certificate and date thereon. **OUTSIDE THE TERRITORY—IN THE UNITED STATES**—taken before a judge of a court of record, justice of the peace, notary, or other officer authorized by the state or territory to take acknowledgments, or before a commissioner appointed for such purpose. Unless taken before a commissioner appointed for such purpose or before a notary, certified under his notarial seal, or before a clerk of a court of record, certified under the court's seal, such deed must have attached the certificate of the clerk or proper officer of court of record of the district or county, with seal of office stating that the officer taking was so authorized and that he believes the signature of such person genuine and that the deed is executed according to the laws of such state or territory. **IN FOREIGN COUNTRIES**—taken according to the laws of the country before a notary, minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner or consul of the United States appointed to reside there, the officer's certificate to be thereon, and, if a notary, his certificate and seal. **MARRIED WOMEN**—in the district must join with her husband in a conveyance and acknowledge that she executes it freely and voluntarily. If she resides outside the district, her acknowledgment may be the same as if she were sole. Husband and wife

by joint deed may convey real estate of wife. **PERSONALLY KNOWN**—parties acknowledging must be personally known to the officer. **WITNESSES**—two to deeds and wills required. Proof of the execution of any conveyance may be made before any officer authorized to take acknowledgments of deeds, by a subscribing witness who knew the parties. Witness must sign name and residence and be personally known or identified to the officer taking. **CURTESY AND DOWER**—one-third for life. **AGE TO CONVEY**—majority, or when married. **PRIVATE SEALS**—abolished. **LIMITATION OF ACTION**—to recover land, ten years; redemption of judgment debtor, or mortgagor, any time before sale or twelve months thereafter. **MECHANIC'S LIEN**—foreclosed within six months.

§ 274. **Arizona** — **ACKNOWLEDGMENTS** — **IN THE STATE**—by clerk of court having a seal, notary, county recorder, justice of the peace. **OUT OF THE STATE**—by clerk of a court of record having a seal, commissioner of deeds appointed by the governor of this state, or a notary public. **OUT OF THE UNITED STATES**—by a minister, commissioner, or charge d'affaires of the United States resident and accredited where the acknowledgment is made. A consul general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States resident in the country, where the acknowledgment is made, or notary public. **PERSONALLY KNOWN**—must appear before and be known to the notary or his identity sufficiently substantiated by credible witnesses. **WITNESSES**—no witnesses are required to a deed; two to wills. **DOWER AND CURTESY**—do not exist. Community property. **PRIVATE SEALS**—are abolished except those of corporations. **AGE TO CONVEY**—married women eighteen years of age; married men twenty-one years of age. **MARRIED WOMEN**—may convey separate property as if unmarried, and acknowledge conveyance in same manner as if she were a *feme sole*. Must join husband and acknowledge conveyance of homestead or community property. **POWER OF ATTORNEY**—husband and wife may give power of attorney to each other to convey property or any interest therein. **LIMITATIONS**—action to recover land when right exists, ten years; under color of title, three years; when cultivated and having deed, five years. **MORTGAGE**—redemption limited to six months. Redemption of real estate sold under execution or tax sale, six months. **JUDGMENT LIENS**—limited to five years. **HOMESTEAD**—exemption, \$4,000. **TRUST DEEDS**—permitted as mortgages. Deeds must be recorded to have effect as against subsequent purchasers for valuable consideration without notice. **MECHANIC'S LIENS**—of original contractor to be filed within ninety days, other persons within sixty days; to be foreclosed within six months.

§ 275. **Arkansas**—**ACKNOWLEDGMENTS**—**IN THE STATE**—taken by the supreme, circuit court, any of the judges of the same, clerk of any court of record, justice of the peace, or notary. Must be under officer's seal. **WITHOUT THE STATE**—by any United States court, any court of any state, territory, colony, possession or dependency, hav-

ing a seal, the clerk of any of such courts, notary, mayor of any city or town, or the chief town officer having a seal of office, or a commissioner appointed by the governor of this state. Officer's seal must be attached if he has one, otherwise his official signature attached. **WITHOUT THE UNITED STATES**—before a United States consul, or any court of any state, kingdom or empire having a seal, mayor or chief officer of any town or city having an official seal, any officer authorized by such country to take probate of the conveyance of real estate of his country, if he has an official seal. Officer's seal must be attached. **PERSONALLY KNOWN**—or proof of identity required. Identity may be proved by witnesses known to court or officer, or affidavit of grantor or witness if such court or officer be satisfied therewith, which proof or affidavit shall be indorsed on deed or instrument. **WITNESSES**—two to a will; two to a deed. **PRIVATE SEALS**—are abolished. **MARRIED WOMEN**—may convey her real estate by deed executed as if she were *feme sole*. **DOWER**—one-third relinquished by joining husband. Conveyance must be by wife's free will and in absence of husband she must acknowledge that she executed deed "without compulsion of undue influence of her husband," which must be shown in certificate. **CURTESY**—attaches on death of wife if she has made no disposal of her separate property. **HOMESTEAD**—exemption, \$2,500. Wife to join husband in conveyance. **POWER OF ATTORNEY**—to transfer must be acknowledged and recorded. **LIMITATIONS**—action to recover land, seven years, or three years after arriving at legal age, discovery, or coming of sound mind. **MORTGAGE**—redemption limited to one year from sale. **TAX SALE**—redemption limited to two years. Judgment under execution, redemption limited to twelve months. **MECHANIC'S LIENS**—to be filed in ninety days, enforced within fifteen months. **JUDGMENT LIENS**—are limited to three years. **DEEDS**—take effect from time of filing as to subsequent purchasers for value without notice. **TRUST DEEDS**—used.

§ 276. **California**—**ACKNOWLEDGMENTS**—**IN THE STATE**—by a justice or clerk of the supreme court, or judge of the superior court anywhere in the state; within the city, county or district for which the officer was elected or appointed by; a clerk of a court of record; a county recorder, court commissioner; a notary public; a justice of the peace. **WITHOUT THE STATE**, but within the United States—it may be taken by a justice, judge or clerk of any court of record of the United States; a justice, judge or clerk of any court of record of any state; a commissioner appointed by the governor of this state for that purpose; a notary public or any officer authorized by the state where the acknowledgment is taken. Each are confined to their jurisdiction. **OUTSIDE OF THE UNITED STATES**—can be taken by a minister, commissioner, or chargé d'affaires of the United States, resident and accredited in the country where the acknowledgment is taken; by a consul, vice consul or consular agent, judge of court of record, residents of the country where taken, or commissioners appointed by the governor of the state, or a notary public or their deputy if so authorized. **PERSONALLY KNOWN**—or

identified to officer on the oath or affirmation of a credible witness is required. Officers taking must affix their signatures, name of their office and their seals of office if their state or country authorize them to have a seal. WITNESSES—not required to a deed; two to a will. Proof of execution of instrument not acknowledged may be made by party executing, by subscribing witness, or by proof of handwriting of either in certain cases. PRIVATE SEALS—are abolished. MARRIED WOMEN—conveyance has same effect as if wife were unmarried, but has no validity until acknowledged. Married women may execute or revoke powers of attorney for sale or incumbrance of real or personal estate, as if unmarried. DOWER AND CURTESY—do not exist. HOMESTEAD—exemption, \$5,000 to head of family. Wife and husband join in conveying. POWER OF ATTORNEY—to convey property must be acknowledged and signed same as a deed. ACTION—to recover land limited to five years. COMMUNITY INTEREST—in property exists. MORTGAGE—redemption limited to twelve months. TAX SALE—redemption limited to twelve months. MECHANIC'S LIENS—to be filed in ninety days. Suit to begin in ninety days after; limit of claim, two years. JUDGMENT—redemption, twelve months; limit of lien, five years. TRUST DEEDS—used as mortgages. Deeds must be recorded to be valid as against subsequent purchasers for value.

§ 277. Colorado—ACKNOWLEDGMENTS—WHO MAY TAKE—IN THE STATE—county judges in their county, clerks of United States circuit and district courts, or their deputy, under the seal of the court; any judge of any court of record; any clerk of such court, or the deputy of the clerk, judge or deputy clerk, county clerk, county recorder, or their deputy, under seal of the county; justice of the peace, provided, if the property lies out of his jurisdiction he shall have attached the certificate of the county clerk and county recorder of the proper county as to his official capacity and authenticating his signature; any notary public under his official seal. OUTSIDE THE STATE—before secretary of any state or territory under state seal; clerk of any court of record or of the United States, therein, under court seal; notary public under his official seal, commissioner of deeds appointed under the laws of this state, under his hand and official seal; any officer of that state so authorized to act, with the certificate of the clerk of some court of record of his county, city or district, that he has such authority. WITHOUT THE STATE—WITHIN COLONY OF THE UNITED STATES—before any judge, or clerk, or deputy of any court of record, under court seal; before chief magistrate or chief executive officer under official seal; before mayor or chief executive officer of any town, city or municipal corporation, having a seal under such official seal; or before a notary under his seal. WITHOUT THE UNITED STATES—before any judge, clerk, or deputy clerk of any court of record, under seal of court; before chief magistrate or other chief executive officer, or mayor; ambassador, minister, consul, vice consul, consular agent, vice consular agent, chargé d'affaires, commercial agent, vice commercial agent, or any diplomatic,

consular or commercial agent or representative, or duly constituted deputy thereof. May be in the language of the country and translated by one learned in the language attached to the instrument, sworn and subscribed to by the translator before a proper officer as a true translation. **PERSONALLY KNOWN**—to the officer, or their identity proved by at least one credible witness known to the officer. Not necessary to state such fact in the certificate, except conveyance or mortgage of homestead. **WITNESSES**—not required to deeds when acknowledged; two to a will. **PRIVATE SEALS**—are abolished. **WOMAN**—age to convey, eighteen. Separate examination not required. **DOWER AND CURTESY**—abolished. **HOMESTEAD**—exemption, \$2,000. Wife must join and be examined separate and apart, and state that she freely and voluntarily acts in signing and acknowledging. Officer to fully apprise her of her rights and the effect of signing. **POWER OF ATTORNEY**—conveyances can be made when executed same as by deed. **ACTION**—to recover land limited to twenty years. **JUDGMENT LIENS**—limited to six years. Execution limited to twenty years. **MECHANIC'S LIENS**—for day labor must be filed within one month, subcontractors and materialmen with two months; principal contractor within three months; limited to six months. **MORTGAGE**—redemption, six months. Creditors' redemption, nine months. **TAX**—redemption, three years. Insane and minors, one year after removal of disability.

§ 278. **Connecticut**—**ACKNOWLEDGED—IN THE STATE**—before a judge of a court of record of this state or of the United States; a clerk of the superior court, court of common pleas, or district court, justice of the peace, commissioner of the school fund, commissioner of the superior court, notary public, either with or without, his official seal, town clerk or his assistant. **OUTSIDE THE STATE**—before a commissioner appointed by the governor of this state, residing there, or any officer authorized by that state to act. **IN A FOREIGN COUNTRY**—before any ambassador, minister, charge d'affaires, consul, vice consul, deputy consul, consul general, vice consul general, deputy consul general, consular agent; vice consular agent, commercial agent, or vice commercial agent, or before any notary or justice of the peace. **WITNESSES**—two required to deeds; three to wills. **PRIVATE SEALS**—L. S. or scroll required. **WOMAN**—can convey as if unmarried. Separate examination not required. **DOWER**—one-third for life. **POWER OF ATTORNEY**—husband and wife can convey by, without joinder. **DEEDS**—take effect when recorded. Corporation deeds require two witnesses; witnesses may be interested. **MORTGAGE**—redemption awarded by court. **MECHANIC'S LIEN**—filed within 60 days; suit limited to two years' time. **TAX**—redemption limited to one year. **JUDGMENT**—redemption, when due, runs four months. **LEASES**—for more than one year must be written, executed, attested, acknowledged and recorded. Statutes of uses remain.

§ 279. **Delaware**—**ACKNOWLEDGMENTS—IN THE STATE**—before the superior court, chancellor or any judge or notary public; before

two justices of the peace for the same county; before the judge of the municipal court or mayor of Wilmington, or before the clerk of the U. S. district court. OUT OF THE STATE—may be made before any consul general, consul, vice consul, consular agent or commercial agent of the United States duly appointed in any foreign country; before any judge of any district or circuit court of the United States, or the chancellor or judge of a court of record of any state, territory or country, or the mayor or chief officer of any city or borough, certified to under their hand and official seal, or certified to by any such court or clerk thereof under the seal of the court; any commissioner of deeds appointed by the governor of this state under his hand and official seal; any notary public. PERSONALLY KNOWN—or identification of acknowledging party required. WITNESSES—one to a deed; two or more to wills. PRIVATE SEALS—scroll will answer. WOMEN—twenty-one years can convey by joining husband. Separate examination of, is required. DOWER AND CURTESY—one-half for life if no children; one-third if there are children. POWER OF ATTORNEY—to convey to be acknowledged or proved and recorded same as a deed. Married women may so convey. ACTION—for recovery of lands limited to twenty years, or ten years after the removal of a disability. DEEDS—to be recorded in three months. JUDGMENT LIENS—limited to ten years. MECHANIC'S LIENS—to be filed in ninety days. TAX—redemption limited to two years.

§ 280. District of Columbia—ACKNOWLEDGMENTS—IN THE DISTRICT—may be made before any judge of the district, United States supreme court, clerk of the district, recorder of deeds, justice of the peace, notary public. OUTSIDE THE DISTRICT—within the United States, before a judge of a court of record and of law, state chancellor, judge of supreme, circuit, U. S. territorial court, justice of the peace, notary public. The certificate of any officer not having a seal must be accompanied by a certificate of the register, clerk, or other public officer having cognizance of the fact, under his official seal, that, at the date of the acknowledgment the officer taking the same was in fact the officer he purported to be. IN A FOREIGN COUNTRY—before any judge, notary public, secretary of legation or consular officer of the United States. If made before any officer other than a secretary of legation or consular officer, the official character of the person taking must be certified to as above. PERSONALLY KNOWN—or identified to the officer, is required. WITNESSES—two to wills. PRIVATE SEALS—conveyance to be sealed. WOMEN—married, over the age of twenty-one years, may convey their separate property as if *feme sole*. Separate examination of, before signing, is required. DOWER—right exists and conveyed by joining husband. May release it by separate deed. CURTESY—exists. POWER OF ATTORNEY—to convey not allowed. ACTIONS—for recovery of land limited to fifteen years. MECHANIC'S LIEN—limited to one year after notice, suit to be filed six months after work done. JUDGMENT LIEN—limited to twelve years.

§ 281. **Florida**—ACKNOWLEDGMENTS—IN THE STATE—before any judge, clerk or deputy clerk of any court of record, United States commissioner, notary public or justice of the peace of this state, under their court or official seal. IN ANOTHER STATE—before a commissioner of deeds for this state, a judge or clerk of any United States or state court having a seal, or before a notary or justice of the peace of such state, master in chancery, register or recorder of deeds, having a seal. IN FOREIGN COUNTRIES—before any commissioner of deeds appointed by the governor of this state resident there, before any notary having a seal, ambassador, envoy extraordinary, minister plenipotentiary, any minister, commissioner charge d'affaires, consul general, consul, vice consul, consular agent or any other consular or diplomatic agent of the United States appointed to reside there, or other military or naval officer authorized to perform duties of a notary. Such proofs to be under the official seal of the officer. PERSONALLY KNOWN—or satisfactorily identified to officer, is required. WITNESSES—two required to deed; two to wills. PRIVATE SEALS—scroll is required. WOMEN—married women may sell and convey as if unmarried; husband must join; married woman minor can convey; her separate examination required, and that she executed it freely and voluntarily and without compulsion, constraint, apprehension or fear of or from her husband. This is required in the officer's certificate. DOWER—may be released by joining husband in the conveyance. CURTESY—none. Spanish law preserved. HOMESTEAD—one hundred and sixty acres of land or one-half of one acre in an incorporated city or town and \$1,000 personalty. Husband and wife to join in conveyance. POWER OF ATTORNEY—to convey to be acknowledged, signed and recorded. Husband must join wife in it. ACTIONS to recover land limited to seven years. TAX—redemption, two years. MECHANIC'S LIEN—limitation, one year.

§ 282. **Georgia**—ACKNOWLEDGMENTS—IN THE STATE—to authenticate the record of a deed, it must be attested by a judge of a court of record of the state, or a justice of the peace, or a notary public, or clerk of the superior court, in the county where the last three hold their appointments, or if subsequent to its execution the deed is acknowledged in the presence of either of the named officers, that fact, certified on the deed by such officer, shall entitle it to record. EXECUTED OUTSIDE THE STATE—it must be attested by or acknowledged before a commissioner of deeds for this state, a consul or vice consul of the United States, their certificate under their seal being sufficient evidence of the fact; or by a judge of a court of record in the state where executed, with a certificate of the clerk under the court's seal of the genuineness of the judge's signature; or by a clerk of a court of record under the seal of the court; or by a notary public of the state and county where executed with his seal or with a certificate from the clerk of the county, [country] under which the notary holds his appointment. PERSONALLY KNOWN—to officer, must be, or identified to. DEEDS—must be in writing. WITNESSES—two required to deeds and three to wills.

PRIVATE SEALS—scroll required. **MARRIED WOMAN**—must join husband in conveying her interest. Separate examination required stating that she joins with husband of her own free will and consent, without any compulsion or force used by him to oblige her to do so. Such statute applies only to sales by husband where wife has interest because of marriage. All property of wife, real or personal, remains her separate property on marriage. Husband may deed directly to wife without intervention of trustee. Wife may mortgage her separate estate. **DOWER**—one-third for life. Transferred by joining husband in the deed. **CURTESY**—none. **HOMESTEAD**—application to sell for reinvestment must be made to the judge of the county superior court. **POWER OF ATTORNEY**—wife may convey by. **ACTION**—for recovery of land limited to twenty years. **DEEDS**—first on record take effect. **ESTATES TAIL**—limited to lives in being. **MORTGAGE**—redemption limited to ten years after recognition of right. **MECHANIC'S LIEN**—notice must be recorded in three months; enforced in twelve months. **TAX**—redemption limited to one year. **JUDGMENTS**—dormant after seven years may be revived by *scire facias* or suit within three years after becoming dormant.

§ 283. **Guam**—**ACKNOWLEDGMENTS**—taken before a notary public or judge appointed therein by proper authority, or by officer who has *ex officio* powers of notary, accompanied by certificate of governor or acting governor to effect that notary was in fact officer he purported to be.

§ 284. **Hawaiian Islands**—**ACKNOWLEDGMENTS—IN THE TERRITORY**—taken by register of conveyances or his agent, judge of a court of record, or a notary of the territory. Notary or other officer must inspect and note erasures or changes before taking acknowledgment, under penalty. Penalty also imposed for false certificate of acknowledgment, or misleading statement in certificate, as well as civil liability for damages. False certificate is forgery. **OUT OF THE TERRITORY**—taken before a notary or judge of a court of record. **PROOF OF EXECUTION OF DEED**—may be made by subscribing witness before judge of court of record of territory should anything occur to prevent acknowledgment. **PERSONALLY KNOWN**—to the officer taking is required of every grantor or proof of their identity by a credible witness. Officer's certificate must so state. **DOWER**—one-third fee simple exists, is released by jointure or by separate deed. **CURTESY**—none. **MARRIED WOMAN**—to be examined apart from husband that she signed without compulsion, fear or restraint of husband. May convey property as if sole, but written consent of husband required to sale or mortgage of real estate. Unmarried women may convey at age of eighteen. **WITNESSES**—none required to deed when acknowledged; two required to wills. **LIMITATIONS**—action for recovery of land limited to ten years, or five years after removal of disability. **DEEDS**—not recorded, void as to subsequent purchasers for value without notice. **MORTGAGE**—redemption within one year. **MECHANIC'S LIEN**—notice to be filed

with circuit court clerk in three months. JUDGMENTS—presumed paid and satisfied after twenty years. TAX—redemption limited to one year.

§ 285. **Idaho**—ACKNOWLEDGMENTS—IN THE STATE—may be made before a justice or clerk of the supreme court. Within the city, county or district, before a judge or clerk of a court of record, a county recorder, notary or justice of the peace. WITHOUT THE STATE—but in the United States and within the jurisdiction of—a justice, judge or clerk of a court of record of the United States, a justice, judge or clerk of any state court of record; a commissioner, appointed by the governor of this state; a notary or any officer authorized by his state laws. OUTSIDE THE UNITED STATES—before a minister, commissioner or charge d'affaires, a consul, vice consul of the United States, resident and accredited, a judge of a court of record; commissioners appointed by this state governor; a notary, or by deputies of the officers mentioned, except notaries, all residents of the country. PERSONALLY KNOWN—to the officer is required, or positive identification. WITNESSES—one witness to a deed if not acknowledged; two to wills. PRIVATE SEALS—not required. WOMEN—age to convey, eighteen. Married women may convey their separate property without joinder of husband. Husband cannot sell or incumber community property unless wife joins. Acknowledgment of married woman taken and certified in same manner and form as single person. DOWER AND CURTESY—none. Community of interest. Conveyance jointly. POWER OF ATTORNEY—subscribed in name of principal. ACTION—to recover land limited to five years. DEEDS—take effect when recorded and are constructive notice to subsequent purchasers and mortgagees. ESTATES—limited to persons in being. HOMESTEAD—exemption, \$5,000 to head of family; \$1,000 to others; conveyed jointly. MORTGAGE—redemption within one year from sale. MECHANIC'S LIENS—contractor files in ninety days; others in sixty days; holds six months after. TAX—redemption, three years. JUDGMENT LIEN—expires in five years.

§ 286. **Illinois**—ACKNOWLEDGMENTS—IN THE STATE—may be taken before a master in chancery, notary, United States commissioner, county clerk, justice of the peace, or any court of record having a seal, or any judge, justice or clerk of such court. A notary or United States commissioner must attest with their official seal. A justice of the peace residing out of the county of the land must have attached to the instrument the certificate of the clerk of his county court, under his seal of office, that he is a justice of the peace at the time. FRAUDULENT ACKNOWLEDGMENT—any officer falsely certifying with intent to defraud or injure or enable any other person to so act shall be imprisoned in the penitentiary not less than one nor more than five years, or confined in the county jail not exceeding one year and fined not exceeding \$1,000. IN OTHER STATES—taken before a justice of the peace, notary public, master in chancery, United States commissioner, commissioner of deeds, mayor, county clerk, judge, justice, clerk or deputy clerk, of the United States supreme, circuit or district courts, same of

any state, supreme, circuit, superior, district, county or common pleas, probate, orphan or surrogate court, or prothonotary or register. In a dependency of the United States before a commissioned officer in United States military service. Each need their own or court official seal. Justices of the peace and masters in chancery shall have added the certificate of the proper clerk under his official seal, stating they are authorized to take and are in office. May be made in conformity to the laws of the state where made, if so certified to, by the county court clerk. WITHOUT THE UNITED STATES—may be taken before any court having a seal, before any judge, justice or clerk thereof, any mayor or chief officer of a city or town having a seal, a notary public, commissioner of deeds, or any ambassador, minister, secretary of legation or consul, vice consul, deputy consul, commercial agent or consular agent of the United States attested by their official seal, or before any officer authorized by the laws of the place where such acknowledgment or proof is made to perform such acts. Must be attested by official seal. If they have no seal, a certificate must be added by some ambassador, minister, secretary of legation, vice consul, deputy consul, commercial agent of the United States, resident there, under his official seal showing that such officer or court is acting at the time. Proper proof being shown, the form of the country shall be prima facie evidence and shall be valid in law. Fraudulent acknowledgments punishable by fine and imprisonment from one to five years and \$1,000. Being a stockholder or officer of a corporation does not prohibit the officer from taking. RECORD OF DEEDS—mortgages, etc., required; notice is from time of filing. Unacknowledged deeds may be recorded but not admitted as evidence unless proved. PERSONALLY KNOWN—or positively identified to officer is required. WITNESSES—none to a deed; two to a will. PRIVATE SEALS—scroll required. WOMEN—age to convey, eighteen. Separate examination not required. DOWER—one-third interest for life, to husband and wife, latter's interest, conveyed by joining husband. CURTESY—abolished. HOMESTEAD—exemption, \$1,000. Conveyed by jointure clause must be inserted in the deed, "including the release and waiver of the right of homestead." POWER OF ATTORNEY—married woman can convey her estate as if single. ACTION—to recover, land limited to twenty years. ESTATE—fee simple conveyed, estate tail abolished. MORTGAGE—redemption limited to one year. MECHANIC'S LIEN—contractor's claim to be filed in four months after work if additional work, then four months thereafter. Suit shall be brought to enforce lien, or a verified claim for lien shall be filed with the clerk of the circuit court within two years after completion of the work. TAX—redemption limited to two years. JUDGMENT—redemption limited to twelve months. JUDGMENT LIEN—limited to seven years. TRUST DEEDS—used as mortgages. CHATTEL MORTGAGES—no mortgage, trust deed or other conveyance of personal property having the effect of a mortgage or lien upon such property, shall be valid as against the rights and interests of any third person, unless possession thereof shall be delivered to and remain with the grantee, or

the instrument shall provide for the possession of the property to remain with the grantor, and the instrument is acknowledged and recorded as hereinafer directed; and every such instrument shall, for the purposes of this act, be deemed a chattel mortgage.—J. & A. Anno. St. ¶ 7576. Such instrument shall be acknowledged before a justice of the peace of the town or precinct where the mortgagor resides, or if there be no acting justice of the peace in the town or precinct where the mortgagor resides, then such instrument may be acknowledged before the county judge of the county in which the mortgagor resides; or, if the mortgagor is not a resident of this State at the time of making the acknowledgment, then before any officer authorized by law to take acknowledgment of deeds. The certificate of acknowledgment may be in the following form: This (name of instrument) was acknowledged before me by (name of grantor) (when the acknowledgment is made by a resident, insert the words “and entered by me”), this —day of—, 18—. (Name of officer.)

Witness my hand and seal—(J. & A. St. ¶ 7577).

§ 287. **Indiana**—ACKNOWLEDGMENTS—IN THIS STATE—by a judge, clerk of a court of record, judge of superior court, justice of the peace, notary, mayor, auditor, recorder, member of the legislature or prosecuting attorney. **IN OTHER STATES**—the same, also commissioner of deeds, for this state, so appointed. **IN FOREIGN LANDS**—United States ministers, consul, charge d'affaires, any officer so authorized by his country. Officer having no seal must have certificate attached of his circuit court clerk, and must state that the officer was at the time lawfully acting and that his signature is genuine. **PERSONALLY KNOWN**—to officer, not required. **WITNESSES**—none required to deeds; two or more to wills. **PRIVATE SEALS**—not required. **WOMEN**—age to convey, eighteen. Conveys by joining husband in the deed. May dispose of own property without concurrence of husband. Separate examination not required. If married to an alien, does not bar her rights to hold or convey. Infant wife over eighteen may convey right to lands of husband, if father, or mother (in case there is no father), or judge of circuit court (in case there are no parents) declares conveyance to be for benefit of married woman. **POWER OF ATTORNEY**—married woman can join her husband in conveyance by power of attorney acknowledged. **ACTION**—for recovery of land fraudulently conveyed or sold by executor or guardian, limited to five years. If sold by execution creditor, to ten years. **DEEDS**—to be recorded, take priority from recording. **DOWER AND CURTESY**—abolished; one-third real estate descends to widow in fee simple; if over \$10,000, one-fourth; over \$20,000, one-fifth. **ESTATE TAIL**—limited to life in being. **HOME-STEAD**—exemption, \$600. **MORTGAGE**—redemption limited to one year. **MECHANIC'S LIENS**—to be filed with county recorder in sixty days, may be enforced within one year. **TAX**—redemption limited to two years. **JUDGMENT LIEN**—for ten years.

§ 288. **Iowa**—ACKNOWLEDGMENTS—IN THIS STATE—before a

court having a seal, the court, judge or clerk, justice of the peace or notary public, in his county or adjoining county, where certificate filed, the county auditor or his deputy. OUT OF THIS STATE—before a court of record or the officer holding its seal, commissioner appointed by the governor of this state, a notary, justice of the peace, the latter must have a certificate showing his authority by the proper authority. OUTSIDE UNITED STATES—any ambassador, minister, secretary of legation, consul, vice consul, charge d'affaires, consular agent, or any other officer of the United States in a foreign country authorized to issue certificates under the seal of the United States. Any officer of a foreign country authorized by its laws, but his certificate must be authenticated by one of the above United States officers' certificate of acknowledgment. PERSONALLY KNOWN—or positively identified by at least one credible witness, naming him, is required. WITNESSES—none required by statute to deeds; two to wills. PRIVATE SEALS—abolished. WOMEN—age to convey, when married; or majority age of eighteen. May incumber or convey own real property. Separate examination not required. DOWER—either husband or wife can elect to take dower or homestead, one-third to each in fee simple. CURTESY—abolished. HOMESTEAD—both join in conveyance, survivor continues in possession. POWER OF ATTORNEY—married woman can convey by power of attorney. The certificate of a county court clerk is not required to accompany the certificate of acknowledgment of a notary public of other states. ACTION—to recover land, ten years; for tax, five years; sold by administrator on mortgage, five years. DEED—recording is notice. MORTGAGE—redemption, one year. MECHANIC'S LIEN—contractors file with district court clerk in ninety days, others in thirty days; right of action limited to two years. TAX—redemption limited to two years nine months; notice by purchaser that time expires in ninety days required. EXECUTION—sale redemption limited to one year. JUDGMENT—recovery in courts of record, twenty years; in courts not of record, ten years.

§ 289. Kansas—ACKNOWLEDGMENTS—WITHIN THIS STATE—before some court having a seal, a judge, justice or clerk thereof, or any justice of the peace, notary public, county clerk or register of deeds, a mayor or clerk of an incorporated city. OUT OF THE STATE—before a court of record, or clerk or officer holding the seal thereof, before a commissioner appointed by the Governor of this state, a notary, justice of the peace, any United States consul resident in any foreign country. If taken before a justice of the peace, the certificate of a clerk of a court of record under his hand and court seal must be attached showing the official character of the justice. PROOF OF EXECUTION BEFORE ACKNOWLEDGING—if the grantor by death, inability or refusal to attend and acknowledge, proof of execution may be made by competent testimony, before any court or officer authorized to take acknowledgments. The certificate upon the deed must state the title of the officer, the death, inability or refusal of the grantor, the

names of the witnesses by whom proof was made. The witnesses can be subpoenaed by the officer if in the county, by attachment, if necessary. An untruthful certificate subjects the officer to indictment and fine according to damage or value of the property. **PERSONALLY KNOWN**—must be shown in the certificate. **WITNESSES**—not required except to prove a deed; two to wills. **PRIVATE SEALS**—abolished. **WOMEN**—age to convey, eighteen; may convey own property to same extent as married men. **Separate examination**. **DOWER AND CURTESY**—abolished. Husband and wife share equally; conveyance to husband and wife creates estate by entirety. **HOMESTEAD**—husband and wife each entitled to; must join in conveying; exemption, 160 acres; in city, one acre improved. **POWER OF ATTORNEY**—conveyance by, must be acknowledged, signed and recorded same as a deed. **ACTION**—for recovery of land, on execution, limited to five years; after sale, on administrator's sale, in five years; after forcible entry, in two years; after legal disability, in two years; other conditions, fifteen years. **DEED**—recording is notice. **MORTGAGE**—redemption, fifteen to eighteen months. **MECHANIC'S LIEN**—claim to be filed in four months; enforced one year from filing; redemption, fifteen to eighteen months by creditor or owner. **TAX**—redemption in three years. **JUDGMENT**—redemption in fifteen to eighteen months.

§ 290. **Kentucky**—**ACKNOWLEDGMENTS**—IN THE STATE—before county court clerk or notary public. **OUTSIDE THE STATE**—before court clerk, his deputy, a notary, mayor, secretary of state, commissioner of deeds for this state, or a judge, all under official seal. **FOREIGN**—before a minister, consul or secretary of legation of the United States, the secretary of foreign affairs, judge of a superior court, under seal. **PERSONALLY KNOWN**—to officer, statutes do not require. **WITNESSES**—two to a deed not acknowledged; two to wills. **PRIVATE SEALS**—not necessary. **WOMEN**—age to convey, twenty-one; may convey by joining with husband. **Separate examination and contents explained**. She must freely and willingly acknowledge. If in the state, officer need only state that it was acknowledged before him. **DOWER AND CURTESY**—each one-third for life. **HOMESTEAD**—conveyed by jointure of husband and wife. Exemption, \$1,000. **POWER OF ATTORNEY**—married women may so convey; must be acknowledged and signed same as a deed. **ACTION**—to recover land limited to fifteen years; may be extended to thirty years. Married woman or her heirs, in three to ten years. **DEEDS**—when recorded are notice. **ESTATES TAIL**—abolished. **MORTGAGE**—redemption limited to one year. **MECHANIC'S LIEN**—statement to be filed in six months with county clerk; action to be brought in one year from filing. **TAX**—redemption limited to two years. **JUDGMENT LIEN**—limited to fifteen years. **TRUST DEEDS**—used as mortgages.

§ 291. **Louisiana**—**ACKNOWLEDGMENTS**—taken before clerks of the supreme court and their deputies, notaries public. **OUT OF THE UNITED STATES**—before ambassadors, ministers, charge d'affaires,

secretaries of legation, consul generals, consuls, vice consuls, commercial agents, all under their official seals. **PERSONALLY KNOWN**—by the officer taking is required. **WITNESSES**—two required to deeds. Witnesses to a will olographic, none; public—nuncupative, three, residents; five, if nonresidents; private—nuncupative, open, five if residents; seven if nonresidents; mystic—sealed, three. **PRIVATE SEALS**—abolished. **WOMEN**—age to convey, twenty-one; husband's consent required. Separate examination. **DOWER AND CURTESY**—survivor has usufruct during life; community system exists. **HOMESTEAD**—allowed so long as occupied; vacating loses it. Exemption—160 acres, \$2,000. **POWER OF ATTORNEY**—may be granted with husband's consent. **MORTGAGE**—and other liens redeemed in ten years if agreed to.

§ 292. **Maine**—**ACKNOWLEDGMENTS**—IN THE STATE—before a justice of the peace, or notary public, or women otherwise eligible under the constitution and appointed for the purpose by the governor with the consent of council. **OUT OF THE STATE**—before any clerk of a court of record having a seal, notary public, justice of the peace, or commissioner. **IN ANY FOREIGN COUNTRY**—before a minister or consul of the United States, or notary public. Seal of court or notary to be affixed, and if outside of state, certificate of secretary of state or clerk of court is necessary. **PERSONALLY KNOWN**—or identified to officer, should be, statute is silent. **WITNESSES**—not required to deeds if acknowledged, one witness necessary otherwise; three to wills. **PRIVATE SEALS**—scroll required. **WOMEN**—age to convey, married woman of any age may convey her own separate property without jointure of husband, but joinder or assent is necessary to bar husband's interest. Separate examination not required. **DOWER AND CURTESY**—abolished; each inherit one-half if there are no children; one-third if there are children. **POWER OF ATTORNEY**—to convey, to be signed, sealed, acknowledged and recorded same as a deed. A deed conveying lands in more than one county lost before recording, or recorded in the wrong county or district and lost, a certified copy from the registry where recorded, may be recorded in any other county or district. A person holding an unrecorded deed or other evidence of title may be given personal written notice to record it, by any one having an interest in it; a failure to comply within thirty days permits compulsion by complaint to a justice of the supreme court. No conveyance of an estate for more than seven years is effectual against others unless recorded. There can be no estate in lands other than tenancy at will unless in writing. When a grantor refuses to acknowledge his deed, the grantee may leave a copy of it with the register and for forty days it is a record. A notary public or justice of the peace, where grantor or land is, may summon the grantor at a time and place stated, to hear testimony, date of deed, names of parties and witnesses to be mentioned in summons. If the officer is satisfied that the deed was executed he shall so certify in the deed. It may then be recorded. A lost or destroyed deed may be replaced by copy left with the register for ninety days; he may prove

it by depositions in perpetuum if parties in interest reside outside the state. A justice of the supreme court may order notice by publication. ACTION—for the recovery of lands limited to twenty years. ESTATE TAIL—limited to two lives in being. HOMESTEAD—exemption, \$500. Conveyed by jointure. JUDGMENT LIEN—limited to twenty years. MECHANIC'S LIENS—to be filed in ninety days. MORTGAGE LIEN—limited to twenty years. Mortgage redemption limited to one year. TAX—redemption, two years.

§ 293. Maryland—CONVEYANCE—no estate of inheritance or freehold, or any declaration or limitation of use, or any estate above seven years, shall pass or take effect unless the deed conveying the same shall be executed, acknowledged and recorded. No words of inheritance necessary to create estate in fee simple in a deed. Deeds to be recorded in six months. Deeds to be valid must be acknowledged and recorded. ACKNOWLEDGMENTS—IN THE STATE—within the county or city of the lands, may be taken before a justice of the peace, a judge of the orphans, circuit, Baltimore supreme court, or notary. Within the state, before any justice of the peace, his official character being certified to by the clerk of the circuit or superior court, under seal, any judge of circuit, orphans, Baltimore City or circuit court, where the grantor may reside. Supreme, orphans' courts or notary, each under their official seals. IN OTHER STATES—before a notary public, a judge of any United States court, a judge of any state or territorial court having a seal, a commissioner of this state to take acknowledgments. OUTSIDE THE UNITED STATES—before any minister, consul general, consul, deputy consul, vice consul, consular agent, or consular officer of the United States. A notary public, a commissioner of this state to take acknowledgments. Party to state that he acknowledged the deed to be his act. Officer's name, title and date to be contained in the acknowledgment. PERSONALLY KNOWN—or identified to the officer, should be. WITNESSES—one to deed; two to a will. PRIVATE SEALS—scroll required. WOMEN—age to convey, eighteen; married women can convey separate property. Separate examination of wife not required. Married woman may make deed of trust of her separate property without husband joining if approved by court of equity. DOWER AND CURTESY—one-third to each for life; conveyed by jointure in deed. HOMESTEAD—none exists. POWER OF ATTORNEY—conveyance thus made by acknowledging, signing and recording, same as a deed. ACTION—for land limited to twenty years. MECHANIC'S LIEN—to be filed in six months; claim holds for five years after filing. TAX—redemption limited to twelve months. JUDGMENT LIEN—limited to twelve years.

§ 294. Massachusetts—ACKNOWLEDGMENTS—IN THIS STATE—to be made before a justice of the peace, special commissioner, or notary public. IN ANOTHER STATE—before a justice of the peace, notary public, magistrate or commissioner appointed by the governor for that purpose. IN A FOREIGN COUNTRY—before such justice, notary,

magistrate, or commissioner or a minister or consul or consular officer of the United States. Taken in other states for record or to be used in evidence in this state, may be taken before any officer of that state authorized by its laws and certified to by the secretary of state under the state seal, or by the clerk of a court of record of the county, stating that the officer was authorized at the time of taking to take, that he is acquainted with his handwriting and believes the signature genuine. The acknowledgment of one grantor is sufficient. Refusal of grantor to acknowledge, court proceedings may be had and instrument proved by subscribing witnesses. **PERSONALLY KNOWN**—to officer required. **WITNESSES**—none to a deed; proof requires one at least; a will, three. **PRIVATE SEALS**—not required. **WOMEN**—married women can convey as if single even though minors. Separate examination of not required. **DOWER AND CURTESY**—one-third to each for life, are conveyed by jointure. **HOMESTEAD**—conveyed by jointure; exemption, \$800. **POWER OF ATTORNEY**—married women may so convey realty when acknowledged, signed and sealed, same as a deed. A deed executed and delivered by the person, or by his attorney, shall be sufficient to convey real estate. Conveyance of an estate in fee simple, fee tail, or for life, or a lease for more than seven years from the making, shall not be valid as against any person other than the grantor or lessor and his heirs and devisees and persons having actual notice of it, unless recorded in the county registry. Deeds shall not be recorded unless the certificate of acknowledgment is indorsed on or attached. Deeds and other instruments recorded in one county where the land lies may be recorded in other counties where it is also situated, from any office copy. **ACTION**—to recover land limited to twenty years. **ESTATE TAIL**—abolished. **MORTGAGE**—redemption limited to three years. **MECHANIC'S LIEN**—claim to be filed in thirty days; ninety days after must be enforced; redeemed in one year. **TAX**—redemption limited to two years. **JUDGMENT**—redemption limited to one year from sale.

§ 295. **Michigan**—Refusal of grantor to acknowledge deed can be evidenced by summoning him before a justice of the peace in the presence of the subscribing witnesses. If the witnesses are dead the deed may be proved by the grantor's or witnesses' handwriting before a court of record in this state. In the meantime the deed may be filed for record with the county register of deeds, where the lands are, which shall for the space of thirty days thereafter, in case of proceedings before a justice and in case of proceedings before a court of record, for the space of ten days after the first day of the next term of such court, have the same effect as the recording of the deed, if such deed shall within that time be duly proved and recorded. **CONTRACTS**—for the sale of lands may be acknowledged the same as deeds. Written instruments, excepting bills of exchange, promissory notes and wills, may be proved or acknowledged the same as deeds. Officer taking, to sign his name and title of his office. **ACKNOWLEDGMENTS—IN THIS STATE**—before any judge, clerk or commissioner of a court of record,

notary public, justice of the peace or a master in chancery; the officer to certify the same under his hand with the date. IN ANOTHER STATE—before any officer authorized by that state, to be signed by the officer and certificate attached by his state secretary or clerk of county court under their seals, stating that such officer at the time of taking was duly authorized to take and that they are well acquainted with his handwriting and verily believe the signature affixed to be genuine. This is not necessary if the officer is a notary and certifies under his official seal. WITHOUT THE UNITED STATES—by any officer authorized to act, or before any minister, commissioner, consul, charge d'affaires or consular agent of the United States resident, certified under their seal of office. PERSONALLY KNOWN—or identified to officer is required. WITNESSES—two to deeds; two to wills. PRIVATE SEALS—scroll required. WOMEN—age to convey, eighteen. Can convey same as if single; separate examination not required; may convey as if unmarried. DOWER AND CURTESY—one-third for life; conveyance made by jointure in the deed. HOMESTEAD—exemption, \$1,500; conveyed by wife joining in the deed. POWER OF ATTORNEY—property may be conveyed by, when acknowledged and signed jointly and recorded same as a deed. ACTION—to recover land limited to twenty years. DEEDS—bear notice when recorded. ESTATES TAIL—abolished. MORTGAGE—redemption limited to six months from sale; action for recovery limited to fifteen years. MECHANIC'S LIEN—must file claim in sixty days. TAX—redemption in six months. JUDGMENT LIEN—limited to ten years. TRUST DEEDS—used for mortgage.

§ 296. Minnesota—ACKNOWLEDGMENTS—WHO MAY TAKE—IN THE STATE—legislators, judges of all courts of record, including federal courts, clerks and deputies of same, United States commissioners, notaries, justices of the peace, registers of deeds, court commissioners, and county auditors, their deputies, county commissioners, town and city clerks, village recorders, within their jurisdiction and with their official seals, commissioned officers for American soldiers or sailors. IN OTHER STATES—judges of the supreme, circuit or district courts of the United States, judges of any court of record of any of the states, clerks and deputies of same, notaries, justices of the peace, commissioners appointed by the governor of this state, all within their jurisdiction. Unless party certifying has an official seal, the certificate must be attached to that of the clerk of the county court, showing authority to certify. FOREIGN—may be acknowledged before any notary public, United States minister, charge d'affaires, commissioner consul, or commercial agent, or other consular or diplomatic officer or their deputies, or other representatives. The same to be certified thereon by the officer taking, under his hand, and if taken before a notary public under his seal of office. PERSONALLY KNOWN—or identified to officer is required. WITNESSES—two required to a deed; two to a will. PRIVATE SEALS—abolished. WOMEN—age to convey, eighteen; married woman can convey with husband though minor. Separate examination of wife not required.

DOWER AND CURTESY—abolished. Surviving spouse entitled to homestead and undivided one-third of realty. **HOMESTEAD**—exemption, 80 acres and dwelling; one-third acre in city over 5,000; one-half acre in a town; can be conveyed by joint deed of husband and wife. **POWER OF ATTORNEY**—can so convey by jointure, if acknowledged, signed and recorded as by deed. **ACTION**—for the recovery of land limited to fifteen years. **ESTATE TAIL**—limited to lives in being. **DEED**—record is notice. **MORTGAGE**—redemption limited to twelve months; foreclosure limited to fifteen years. **MECHANIC'S LIEN**—claim to be filed within ninety days; foreclosed within one year from time material furnished. **TAX**—redemption, three years; action to recover limited to six years. **JUDGMENT LIEN**—limited to ten years.

§ 297. **Mississippi**—**ACKNOWLEDGMENTS**—every conveyance of property must be acknowledged or proved by an authorized officer to entitle it to record. **IN THIS STATE**—may be taken by any judge of a United States court, any judge of the supreme or circuit court, or any chancellor, or any clerk of a court of record, a notary public under his official seal, any justice of the peace, police justice, mayor of any city, town, or village, or member of the board of supervisors, whether the property be in his county or not. **IN ANOTHER STATE**—before the chief justice of the United States or an associate justice, any United States circuit or district judge or any United States judge, any supreme or superior court judge of the state, any justice of the peace of such state or territory whose official character shall be certified under the seal of some court of record in his county, or any commissioner in such state appointed by the governor of this state to take acknowledgments, any notary or clerk of a court of record having a seal of office. Same shall be as good and effectual as if the certificate of acknowledgment or proof had been made by a competent officer in this state. **IN A FOREIGN COUNTRY**—before any court of record, the mayor or chief magistrate of any city, borough, or corporation where the party resides or may be, or any commissioner residing in such country appointed by the governor, any ambassador, foreign minister, secretary of legation or consul of the United States. The officer's certificate to state that the party, or the party and witnesses were identified before him, that they acknowledged the execution, or that it was proved by the witnesses, same to be as effectual as if done in this state. **PERSONALLY KNOWN**—or identified to officer required; also personal appearance necessary. **WITNESSES**—one to a deed; two to a will. **PRIVATE SEALS**—are abolished. **WOMEN**—married, can convey property; unmarried, twenty-one years of age, can convey; wife to be described as such. Separate examination not required; conveyed as if she were sole. **DOWER AND CURTESY**—abolished. **HOMESTEAD**—exemption, \$2,000; conveyed by jointure of husband and wife. **POWER OF ATTORNEY**—conveyances may be made by, when signed, acknowledged and recorded same as deeds. **PROOF**—if the grantor and witness be dead or absent, preventing personal attendance, the instrument may be

proved by the oath of anyone, who on examination before the competent officer can prove the handwriting of the witness; when such cannot be had, the handwriting of the grantor may be proved, the officer certifying accordingly. **ACTION**—for recovery of land limited to ten years. **DEED**—recorded is notice. **ESTATE TAIL**—limited to lives in being. **MORTGAGE**—redemption limited to six months. **MECHANIC'S LIEN**—suit to begin in six months after due. **TAX**—redemption limited to two years. **JUDGMENT LIEN**—limited to seven years; can redeem in two years.

§ 298. **Missouri**—**ACKNOWLEDGMENTS**—IN THIS STATE—before any court having a seal, a judge or clerk thereof, notary public, justice of the peace of the county where the land is. IN ANY OTHER STATE—before any notary public, any United States or state court, having a seal, or the clerk of such courts or any commissioner appointed by the governor of this state. OUTSIDE THE UNITED STATES—before any court of the country having a seal, mayor or chief officer of any town or city having a seal, any minister or consular officer of the United States or any notary having a seal. Falsely certifying, or aiding in a false acknowledgment, by an officer, shall be deemed forgery in the second degree. **PERSONALLY KNOWN**, to the officer, required or proved by two credible witnesses, who must sign with address. **WITNESSES**—two to a will; deeds may be proved by testimony of subscribing witness. **PRIVATE SEALS**—not required. **WOMEN**—age to convey, eighteen; can convey their realty by joinder with husband. Wife of alien may convey. Separate examination not required. **DOWER**—may convey by joining the husband. **CURTESY**—one-third for life. **HOMESTEAD**—exemption, \$1,500; in large cities, \$3,000; conveyed by jointure of husband and wife. **POWER OF ATTORNEY**—married woman may convey by power of attorney, by executing and acknowledging jointly with her husband. **ACTION**—for recovery of land limited to ten years. **MORTGAGE**—redemption limited to one year. **MECHANIC'S LIENS**—claim to be filed in six months; laborer's in sixty days; action in ninety days. **TAX**—redemption limited to two years; suit against purchaser within three years. **JUDGMENT LIEN**—three years; action barred in ten years.

§ 299. **Montana**—**ACKNOWLEDGMENTS**—IN THE STATE—may be made anywhere in the state before a justice or clerk of the supreme court, or a judge of the district court, may be made within the officer's place of appointment or election before a clerk of a court of record, a county clerk, a notary public, a justice of the peace. IN ANY OTHER STATE—and within the jurisdiction of the officer—before a justice, judge or clerk of any United States court of record, a justice, judge or clerk of any state court of record, a commissioner appointed by the governor of this state, a notary public, any other officer authorized by the laws of that state. OUTSIDE THE UNITED STATES—may be made without the United States before a minister, commissioner, or charge d'affaires of the United States resident or accredited to that

country; before a United States consul, vice consul, or consular agent resident in that country, a judge of a court of record, a commissioner appointed by the governor, a notary public, any deputy allowed these officers by law. Officers must authenticate by affixing their signatures and name of office and their official seals, if they have a seal, otherwise they must show by what authority they are acting. Justices of the peace, when certificate is used in another county, must have their certificate accompanied by a certificate under the hand and seal of the clerk of their county showing that he was authorized to take and that the clerk is acquainted with his handwriting and believes the signature genuine. PERSONALLY KNOWN—or identified to the officer is required. WITNESSES—none to a deed; one to a proof; two to wills. PRIVATE SEALS—abolished. MARRIED WOMEN—can convey same as if single. Separate examination not required. Acknowledgment same as that of other persons. DOWER—widow entitled to. CURTESY—not allowed. HOMESTEAD—exemption, \$2,500; conveyed by jointure of husband and wife. POWER OF ATTORNEY—signed and acknowledged, same as a deed. Married women may so convey. Proof of the execution of an instrument not acknowledged may be made by the party executing it or by a subscribing witness or by other witnesses. The subscribing witness must be personally known or identified on oath to the officer. The execution may be established by proof of the handwriting of the party and of the witness when the parties and witnesses are dead or out of the state or their residence is unknown, when the witness conceals himself or cannot be found or the refusal of the witness to testify one hour after his appearance. ACTION—to recover land limited to ten years. ESTATE TAIL—abolished; limited to life in being. JUDGMENT LIEN—limited to six years. MECHANIC'S LIEN—claims to be filed in ninety days; actions to be commenced within twelve months from filing of lien. MORTGAGE—redemption limited to ten years. TAX—redemption, three years.

§ 300. Nebraska—ACKNOWLEDGMENTS—grantor must state it to be "his voluntary act and deed." IN THIS STATE—taken before a judge or clerk of any court, a justice of the peace, or a notary public, within their jurisdiction. IN ANOTHER STATE—in accordance with laws of such state, before court or clerk thereof or officer holding seal, commissioner, notary or justice. The officer certifying must use his official seal, otherwise the certificate of a clerk of a court of record, under its seal, or other proper officer, must be attached to the instrument showing that the officer taking was at the date such officer, that he is well acquainted with his handwriting, that he believes the signature is genuine, that the instrument is executed and acknowledged according to the laws of the state. IN A FOREIGN COUNTRY—it may be executed according to the laws of the country and acknowledged before a notary public, or a United States minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner, commercial agent, or consul appointed to reside there. The ac-

knowledge shall be certified thereon by the officer, and if a notary public, his seal shall be affixed to such certificate. **PERSONALLY KNOWN**—or identified to the officer. **WITNESSES**—one to a deed; two or more to a will. **PRIVATE SEALS**—abolished. **WOMEN**—age to convey, sixteen, if married. Married women convey as if single. Separate examination not required. **DOWER AND CURTESY**—one-third to each for life; conveyed by jointure. **HOMESTEAD**—exemption, \$2,000; conveyed by jointure of husband and wife. **POWER OF ATTORNEY**—to convey lands must be proved and acknowledged, signed and recorded same as a deed. **ACTION**—to recover land limited to ten years. **DEED**—when recorded is notice. **MORTGAGE**—decree is a final judgment. **MECHANIC'S LIEN**—claim to be filed in four months; holds two years. **TAX**—redemption, two years. **JUDGMENT LIENS**—limited to five years.

§ 301. Nevada—**ACKNOWLEDGMENTS**—must be certified on instrument and under officer's hand and official seal. Who can take—**IN THE STATE**—county recorders, a judge or clerk of a court having a seal, a notary public or justice of the peace, provided, if in another county, the latter shall have attached to his certificate the certificate of the clerk of the district court of his county showing his official character. **IN OTHER STATES**—by a judge or clerk of any United States court, or of any state or territorial court having a seal, by any commissioner appointed by the governor of this state for that purpose, by a justice of the peace, if accompanied by a certificate of a clerk of his county court of record having a seal showing the justice's official character and authenticating his signature. **WITHOUT THE UNITED STATES**—by a judge or clerk of a court having a seal, by a notary or any United States minister, consul or commissioner resident. Each officer authorized to take acknowledgments shall keep a record of same in a book for that purpose, entering the date taken, the date of the instrument, its name and character, names of parties thereto, to be open for inspection. A failure to comply subjects officer to a penalty of from \$50 to \$500 and liable on his bond for damages sustained. **PERSONALLY KNOWN**—to officer or proved by witness. **WITNESSES**—none required to a deed; may be proved by testimony of subscribing witness; two to a will. **PRIVATE SEALS**—abolished. **WOMEN**—age to convey, marriage permits conveyance at any age. Wife must join husband in conveyance of her separate estate. Separate examination of a married woman is not required. Acknowledgment in same manner as if unmarried. **DOWER AND CURTESY**—abolished. Community system exists; husband controls community property. **HOMESTEAD**—\$5,000. Conveyed by jointure. **POWER OF ATTORNEY**—conveyed same as by deed, signed and acknowledged separately. **ACTION**—to recover land limited to ten years; to five years after seizure. **DEED**—when recorded is notice. **MORTGAGE**—redemption, six months. **MECHANIC'S LIENS**—contractor to file claim in sixty days; all others in thirty days. **TAX**—redemption in six months. **JUDGMENT**—redemption in six months; limitation of lien, six years.

§ 302. **New Hampshire**—ACKNOWLEDGMENTS—IN A FOREIGN COUNTRY—taken before a justice, notary, commissioner, a minister or consul of the United States. PERSONALLY KNOWN—to officer not required. WITNESSES—two or more to a deed; three or more to a will. PRIVATE SEALS—scroll required. WOMEN—age to convey, twenty-one. If not of age, conveyance is only by jointure. Separate examinations not required. DOWER AND CURTESY—one-third for life. Conveyance by jointure. HOMESTEAD—exemption, \$500. Conveyance by jointure. POWER OF ATTORNEY—can so convey same as by deed. No deed of bargain and sale, mortgage, nor conveyance of real property, nor any lease for more than seven years shall be valid against any person but the grantor and his heirs unless attested, acknowledged and recorded. Same with power of attorney for conveyance of real estate. Person interested may have his deed or lease recorded in more than the one original county. Proof of execution of deed may be made by one or more of the subscribing witnesses before any court of record in the state. If not accessible, proof may be made on oath of two witnesses acquainted with the grantor's handwriting. If the grantor or lessor is a resident of this state, notice of the time and place of proving the same, signed by a justice, shall be delivered to him or at his abode fourteen days prior to the time of proving. A justice may, upon complaint of an interested party, issue a warrant to compel party having an unrecorded deed to place same on record or commit him to jail until the request is complied with. ACTION—to recover land limited to twenty years. DEED—when recorded is notice. If not acknowledged may be recorded sixty days. MORTGAGE—redemption barred by entry under process and possession for one year, or by peaceable entry, possession for one year and publication of notice. MECHANIC'S LIENS—continue for ninety days; secured by attachment. TAX—redemption, one year; highway tax, two years. JUDGMENT—redemption in thirty days.

§ 303. **New Jersey**—ACKNOWLEDGMENTS—officer must make known the contents of the instrument to the party acknowledging and they must certify it as their voluntary act and deed. IN THIS STATE—before the state chancellor, commissioner of deeds, justices of the supreme court, a master in chancery, a judge of a court of common pleas, clerk of such court, deputy county clerk, surrogate, deputy surrogate, attorney at law, notary public, or register of deeds; the certificate shall be written upon or under the instrument. Same shall be received in evidence in any court of the state. Any common pleas judge may take an acknowledgment for land in any county in the state, county clerks, register of deeds. IN ANOTHER STATE—before the chief justice or justices of the United States supreme court, a master in chancery for this state or any attorney of this state, any United States circuit or district judge, any judge or justice of the supreme or superior courts of any state or their chancellors, a commissioner of deeds for this state under his seal of office, any mayor or chief magistrate of any city, borough or corporation under their seal, a judge of common pleas, each

to apply certificate of his office and authorization under his court or official seal. IN ANY FOREIGN COUNTRY—commissioner of deeds for New Jersey, or master in chancery for this state, any public ambassador, minister, consul, vice consul, consular agent, charge d'affaires, or other representative of the United States, any court, notary public, any mayor or chief magistrate of any city, duly certified under the city seal, and shall be as effectual as if made before the chancellor of this state, provided, that when made before a judge, a certificate under the seal of the state, nation or court where made shall be attached stating the officer is such. PERSONALLY KNOWN—or identified by subscribing witnesses to the officer is required. WITNESS—two to deed; two to a will. Testator may acknowledge signature to witnesses. PRIVATE SEAL—scroll required. WOMEN—age to convey, twenty-one years. Separate examination required, and sign, seal and deliver same as her voluntary act and deed freely without fear, contents of instrument having been explained. DOWER AND CURTESY—one-third each for life and are conveyed by jointure. HOMESTEAD—exemption, \$1,000. Transferred by jointure. POWER OF ATTORNEY—to convey must be by jointure of husband and wife, acknowledged, signed and recorded as by deed. ACTION—to recover land limited to twenty years. MORTGAGE—redemption limited to six months. TAX—redemption limited to one year. JUDGMENT LIEN—limited to twenty years.

§ 304. New Mexico—CONVEYANCE—any person or body politic holding any right or title to real estate in this territory may convey the same, subscribed to by the person transferring or by his legal agent or attorney. ACKNOWLEDGMENTS IN THE STATE—may be made before a clerk of the district court, a judge or clerk of the probate court, under the court seal, a notary public, or a justice of the peace. IN OTHER STATES—before a clerk of a court of record having a seal, a commissioner of deeds appointed under the laws of this state or a notary public. OUTSIDE THE UNITED STATES—before a United States minister, commissioner, charge d'affaires, consul general, consul, vice consul, deputy consul or agent, resident in the country, a notary public, having a seal. PERSONALLY KNOWN—to the officer or proved by two reliable witnesses and so stated. WITNESSES—none to deed; two to a will. PRIVATE SEALS—not required. WOMEN—a married woman uniting with her husband in the execution shall be described as his wife. Her acknowledgments shall be taken and certified as if she were sole. Not necessary to join with him. No separate examination is required. A married woman need not personally appear before the officer. She may sign and convey any conveyance through an attorney, who may be authorized in writing by a power of attorney executed and acknowledged by herself and husband as authorized by law. DOWER AND CURTESY—abolished. Community property system prevails. HOMESTEAD—exemption, \$1,000. Conveyed by jointure of husband and wife. POWER OF ATTORNEY—shall be certified and registered, and revoked only in writing and by record. ABSTRACTS—

under the seal of any title abstract company incorporated and doing business in this state shall be received in all courts of this state in evidence. A false certificate by an officer of such company or any person shall, upon conviction, subject to a fine of not more than \$500 or imprisonment in the penitentiary not to exceed three years, or both. Foreigners shall have full power to acquire and hold real estate by deed, will or inheritance, when acquired in good faith same as a citizen of the United States; also to aliens to sell, assign and transfer same. ACTION—to recover land limited to ten years. MORTGAGE—redemption limited to one year. MECHANIC'S LIEN—filed by contractors within ninety days; other persons, sixty days; continues in force two years. TAX—redemption, three years. JUDGMENT LIEN—exists five years.

§ 305. New York—ACKNOWLEDGMENTS—IN THE STATE—of deeds may be made before a justice of the supreme court anywhere in the state, before a judge, clerk, deputy clerk, special deputy clerk of a court, a notary, mayor, or recorder of a city, a justice of the peace, in his county, surrogate, special surrogate, special county judge or commissioner of deeds, within the district of their appointment. IN OTHER STATES—before a judge of the supreme court, of the circuit court of appeals, or of the district court of the United States, a judge of the supreme, superior or circuit court of a state, a mayor of a city, a commissioner appointed for that purpose by the governor of the state, any officer authorized by the laws thereof to take acknowledgments, each acting within their jurisdiction or court. When taken by a commissioner appointed by the governor for a city or county within the United States, and without this state, the certificate must also state the day on which and the town and county or the city in which it was taken. IN FOREIGN COUNTRIES—before a United States ambassador, minister plenipotentiary, minister extraordinary, minister resident, or charge d'affaires, residing and accredited within the country, a consul general, vice consul general, deputy consul general, vice consul or deputy consul, a consular or vice consular agent, or a consul or commercial or vice commercial agent of the United States residing in the country, a commissioner appointed by the governor and acting within his jurisdiction, a person specially authorized for that purpose by a commission under the seal of the supreme court issued to a reputable person residing in or going to the country, under seal. In Porto Rico, Philippine Islands, Cuba, or places where United States exercises sovereignty, before judge or clerk of court of record, mayor or chief officer of city, commissioner appointed by governor of this state, officer of United States army of rank of captain or higher, officer of United States navy of rank of lieutenant or higher. Certificate of officers, except last two to have seal attached or statement that officer has no seal. Certificate of army and navy officers to be authenticated by secretary of war, or navy, as case may be. If within states comprising Empire of Germany or Kingdom of Italy, also before judge of court of record under court seal, or notary

under his seal and seal of city or town of residence. If within the Kingdom of Norway, Sweden or Denmark, or any dependencies, before a judge or clerk of a court of record under seal of court, before mayor or chief magistrate of city or town under city seal, before notary under his seal and seal of city or town where he resides, before sheriff under his hand, and seal of city or town where he resides, before consul general, vice consul general, deputy consul general, consul, vice consul, deputy consul, consular agent, vice consular agent, commercial agent or vice commercial agent. If within the Dominion of Canada, it may also be made before any judge of a court of record, or before any officer of such dominion authorized by the laws thereof. If within the United Kingdom of Great Britain and Ireland or the dominion thereunto belonging, it may also be made before the mayor, provost or other chief magistrate of a city or town therein, or a notary. The certificate must be under the hand and seal of the officer taking, or the seal of the office to which he is attached. A clerk's certificate authenticating a certificate of acknowledgment taken before a judge or court of record in Canada must specify that there is such a court, that the judge before whom the acknowledgment was taken was, when it was taken, a judge thereof, that such court has a seal, that the officer authenticating is clerk thereof, that he is well acquainted with his handwriting and believes his signature is genuine. An officer authenticating a certificate of acknowledgment or proof must subjoin or attach to the original certificate under his hand, and if he has, pursuant to law, an official seal, under such seal. Except when the original certificate is made by a judge of a court of record in Canada, such certificate of authentication must specify that at the time of taking the acknowledgment or proof the officer taking it was duly authorized to take the same, that the authenticating officer is acquainted with the former's handwriting, or has compared the signature to the original certificate with that deposited in his office, and that he believes it genuine. If the original certificate is required to be under seal he must also verify that. A certificate of, made within the state, by a commissioner of deeds, justice of the peace, or, except as otherwise provided by law, by a notary public, does not entitle the conveyance to be read in evidence or recorded, except within the county in which the officer resides at the time of making such certificate, unless authenticated by a certificate of the clerk of the same county. This does not apply to a conveyance executed by an agent for the Holland Land Company or of the Pultney estate, lawfully authorized to convey real property. In the following cases a certificate of acknowledgment or proof is not entitled to be read in evidence or recorded unless authenticated by the following officers, respectively: Where the original certificate is made by a commissioner appointed by the governor, by the secretary of state; where made by a judge of a court of record in Canada, by the clerk of the court; where made by the officer of a state of the United States or of the Dominion of Canada authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein, by the secretary of state of

the state, or the clerk, register, recorder or prothonotary of the county in which the officer making the original certificate resided, when certificate was made, or by the clerk of any court of that county having by law a seal. The officer within state can compel the subscribing witness to attend and testify before him concerning the execution of the conveyance. Refusal to testify forfeits to the person injured \$100 and commitment to prison by the officer, there to remain without bail and without liberties of the jail until he answers under oath. The officer must indorse upon or attach to the instrument a certificate, signed by himself, stating all matters required to be done, known or proved, together with the name and substance of the testimony of each witness examined, and if a subscribing witness, his place of residence. **MARRIED WOMEN**—may acknowledge the same as if unmarried. Age, twenty-one. **PERSONALLY KNOWN**—officer must know the party acknowledging or have satisfactory evidence that the party making it is the one who executed the instrument. When proof is made by a subscribing witness, he must state his residence, that he knows the party. Officer must know the witness to be the subscribing witness. **WITNESSES**—none if acknowledged; two to will. **PRIVATE SEAL**—scroll required. **DOWER**—one-third for life for widow; conveyed by jointure. **HOMESTEAD**—exemption, \$1,000. **POWER OF ATTORNEY**—to convey by married woman does not require husband's concurrence, but she must acknowledge and sign same in a private examination. **ACTION**—to recover land limited to twenty years. **ESTATES TAIL**—limited to lives of two in being. Husband and wife can convey to each other. **JUDGMENT LIENS**—limited to twenty years. **MECHANIC'S LIENS**—action expires in one year; redeemed before action. **MORTGAGE LIEN**—limited to twenty years. **TAX**—redemption, one year. **RECORDING**—is notice; deeds void unless recorded.

§ 306. **North Carolina**—**IN THE STATE**—execution of deeds, contracts, mortgages, powers of attorney, leases for more than three years, releases or instruments required to be registered, may be proved or acknowledged before several justices of supreme court, judges of superior court, commissioner of deeds, clerks of supreme court, clerks of superior court, deputy clerks of superior courts, several clerks of criminal courts, notaries public and justices of the peace. **OUTSIDE OF STATE**—before judge or clerk of court of record, notary public, commissioner of deeds, mayor or chief magistrate of city or town, ambassador, minister, consul, vice consul, consul general, vice consul general or commercial agent of the United States, or justice of the peace. Latter must be certified by clerk of court of record of county where justice resides. **PERSONALLY KNOWN**—personal appearance necessary. Personal knowledge of is not required. **WITNESSES**—one or more to a deed; two to a will. **PRIVATE SEAL**—scroll required. **WOMEN**—age to convey, twenty-one years. Married women can convey their separate property. Separate examination of married woman is necessary; also necessary to a chattel mortgage. Real property conveyed with writ-

ten assent of husband. DOWER AND CURTESY—one-third life. Conveyances made by jointure of husband and wife. HOMESTEAD—exemption, \$1,000. Conveyed by jointure. POWER OF ATTORNEY—can so convey. Must be jointly by husband and wife. ACTION—to recover land limited to twenty years. ESTATE TAIL—abolished. JUDGMENT, MECHANIC'S LIEN, MORTGAGE LIEN—limited to ten years. TAX—redemption, one year.

§ 307. North Dakota—ACKNOWLEDGMENTS—IN THE STATE—before a justice or clerk of the supreme court or notary public. Within their jurisdiction before a judge or clerk of a court of record, mayor of a city, register of deeds, justice of the peace, county auditor, or a United States circuit or district court commissioner. WITHOUT THIS STATE—but within the United States and within the officer's jurisdiction—before a justice, judge or clerk of any court of record, a notary or any officer so authorized by the laws of his state, a commissioner of deeds appointed by the governor of this state. WITHOUT THE UNITED STATES—before a minister, commissioner or charge d'affaires of the United States resident and accredited in the country, a secretary of legation, a consul, vice consul, or consular agent resident in the country, a judge, clerk, register or commissioner of a court of record, a notary public, any officer so authorized by the laws of the country, or deputies of the officers mentioned. Officers must authenticate, by using their seal of office if they have one, their signature and title. An acknowledgment before a justice of the peace to be used outside his county must be accompanied with the certificate of a clerk of a county court or any other court of record under his hand and seal of office, stating that such justice at the taking was authorized to be the same and that the clerk is acquainted with his handwriting and believes the signature genuine. Cannot be taken by a party in interest. PERSONALLY KNOWN—to the officer or proved by witnesses is required. WITNESSES—two to will; none to a deed; execution of deed may be proved by subscribing witness. PRIVATE SEALS—abolished. WOMEN—age to convey, eighteen. Convey same as if single. Separate examination not required. DOWER AND CURTESY—abolished. Estate descends in equal shares to surviving spouse and child, or issue of such child if only one child. If more than one child, one-third to surviving spouse and remainder to children. HOMESTEAD—exemption, \$5,000. Conveyed by jointure of husband and wife. POWER OF ATTORNEY—conveyance so made as by deed. ACTION—to recover land limited to twenty years. MORTGAGE—redemption limited to one year. MECHANIC'S LIEN—claim to be filed in ninety days; suit to begin in thirty days after if demanded. Must be enforced within six years. TAX—redemption limited to three years. JUDGMENT LIEN—redemption in one year; lien limited to ten years.

§ 308. Ohio—ACKNOWLEDGMENTS—IN THE STATE—before a judge of a court of record or its clerk, county auditor, surveyor or notary, mayor or justice of the peace, certified and signed on document,

a commissioner of deeds for Ohio or United States consul. **WITHOUT THE STATE**—before a commissioner, consul general, vice consul general, deputy consul general, consul, vice consul, deputy consul, commercial agent and consular agent, resident in foreign country. **PERSONALLY KNOWN**—or proved to the officer and personal appearance necessary. **WITNESSES**—two required to deeds; two to a will. **PRIVATE SEALS**—abolished, except corporations. **WOMEN**—age to convey, sixteen; may convey as if unmarried. Separate examination not required. **DOWER**—exists as to widow and widower, one-third the estate for life. **CURTESY**—abolished. **POWER OF ATTORNEY**—acknowledged same as deed, etc. **ACTION**—to recover land limited to twenty-one years; if a disability, ten years after the removal. **ESTATE TAIL**—limited to life in being. **HOMESTEAD**—exemption, \$1,000. **DEED**—is notice when recorded. **MORTGAGE**—redemption limited to thirty days. **TAX**—redemption limited to two years. **JUDGMENT**—redemption before thirty days; lien limited to five years.

§ 309. **Oklahoma**—**ACKNOWLEDGMENTS IN THE STATE**—may be taken before a notary public, county clerk, or clerk of the district or county court, county judge. **OUTSIDE THE STATE**—by any notary public, clerk of a court of record, commissioner of deeds appointed by the governor. **IN A FOREIGN COUNTRY**—by any court of record or its clerk, or any United States consul or county must be taken under the officer's seal. **PERSONALLY KNOWN**—or proved to officer is required. **WITNESSES**—none required to deeds; two to a will. **PRIVATE SEALS**—dispensed with. Conveyances or instruments affecting title to real estate must be in English language. **WOMEN**—age to convey, eighteen years. Wife may convey separate property as if unmarried. Separate examination not required. **DOWER AND CURTESY**—abolished. **HOMESTEAD**—exemption, 160 acres; in city, one acre. Released by wife joining husband in deed. **POWER OF ATTORNEY**—to convey real estate must be signed, acknowledged and recorded same as a deed. Release of mortgage may be made on the margin of the record by the holder or his agent or it may be made on a separate instrument signed and acknowledged and recorded. **ACTION**—to recover land limited to fifteen years. **MECHANIC'S LIEN**—filed within four months; suit brought in one year. **TAX**—redemption, two years. **JUDGMENT LIEN**—limited to five years.

§ 310. **Oregon**—**ACKNOWLEDGMENT**—**IN THIS STATE**—taken by a judge of the supreme court, county judge, justice of the peace or notary in the state, certified and dated under their hand. **IN ANY OTHER STATE**—according to its laws and acknowledged before any judge of a court of record, justice of the peace, notary public, or other authorized officer by the state's laws, or a commissioner appointed by the governor of this state for the purpose. Unless taken before a commissioner appointed by the governor of this state for the purpose, or a notary certified under his official seal, or before the clerk of a court of record certified under the seal of the court, it shall have attached a

certificate of the clerk or other proper certifying officer of a court of record of the county or district, under the seal of his office, that the person whose name is subscribed to the certificate was at the date such officer, that he believes the signature genuine, that the deed is executed according to the law of the state. **IN A FOREIGN COUNTRY**—it may be executed to the law of the country and acknowledged before a notary or a United States minister plenipotentiary or extraordinary, minister resident, charge d'affaires, commissioner, consul, vice consul, or consul general, appointed to reside there and certified under his hand. The notary's seal shall be attached to his acknowledgment. **TELEGRAPHIC COPY**—of acknowledgment may be admitted to record. **PERSONALLY KNOWN**—or identified to officer by subscribing witness required, and personal appearance. **WITNESSES**—two to a deed; two or more to a will. **PRIVATE SEAL**—scroll. **WOMEN**—age of, eighteen. May convey by joining husband, stating she executes it freely and voluntarily, any time after marriage. Out of the state she can execute same as if single her separate property. Separate examination not required. **DOWER AND CURTESY**—husband and wife have a one-half life interest in each other's property. Conveyance by jointure. **HOME-STEAD**—\$3,000, as long as occupied. Conveyance jointly. **POWER OF ATTORNEY**—can so convey same as by deed if unmarried; if married, by jointure. Either can convey their separate property without jointure. **ACTION**—to recover land limited to ten years. **MORTGAGE**—redemption in one year. **MECHANIC'S LIEN**—filed by contractor within sixty days, by others within thirty days, foreclosure within six months. **TAX**—redemption, three years. **JUDGMENT**—redemption, one year; lien limited to ten years.

§ 311. **Pennsylvania**—**ACKNOWLEDGMENTS**—all deeds to be acknowledged or proved. **IN THE STATE**—before one of the judges of the supreme court or one of the justices of the court of common pleas of the county where the land lies. Acknowledgments for lands in the state made before the president of the court of common pleas for the county of Philadelphia or the president of the court of common pleas in any other county of this state shall be as effectual in law as if made before one of the judges of the supreme court. If before any assistant or associate judge of the courts of common pleas, it shall be equally effectual. The mayor and recorder of the city of Philadelphia (the master of the rolls) and the justices of the peace of the state can take in their county. Aldermen of the city of Philadelphia can take, recorders of deeds in their county or city, under their hand and official seal. Notaries public, prothonotary of supreme court, county treasurers, county commissioners, representatives, may take. **IN OTHER STATES**—may be acknowledged before judge of United States supreme or district court, judges of supreme, superior, or courts of common pleas, or any court of record, duly certified, notaries public or commissioners of deeds. Proof of official character of person taking acknowledgment to be under seal. **WITHOUT THE**

UNITED STATES—before any consul, vice consul, ambassador, minister plenipotentiary, charge d'affaires, deputy consul, commercial agent, vice and deputy commercial agent, consular agent, military officers of rank of major or higher, or commissioner of deeds. Foreign commissioners in chancery certified under their official seals. Certificates and seals of officers outside of the state are not required to be proved, but accepted as prima facie evidence. The certificate of a justice of the peace or alderman must be verified by the clerk or prothonotary of a court of record, under the court seal. **MILITARY**—a major, or higher officer, can take acknowledgments in the army. Corporations may employ its attorney to acknowledge its documents. Army and navy and government officers in Porto Rico, Cuba and Philippine Islands can take. **PERSONALLY KNOWN**—or proved to officer is required. **WITNESSES**—two required to a deed; two to wills. **PRIVATE SEALS**—scroll required. **WOMEN**—married, to convey property with husband joining in the deed. Separate examination of married women not required. **DOWER AND CURTESY**—one-third for life if there are children; one-half if there is only one child, or no children. Estate descends in lieu of dower or curtesy. **POWER OF ATTORNEY**—married women can release their own estates by power of attorney, without husband joining, when duly acknowledged and recorded. **ACTION**—for recovery of lands limited to twenty-one years, or ten years after a disability; fifteen years for existing rights; seven years quiet possession; forty years bars the world. **HOMESTEAD**—exemption, \$300. **JUDGMENT LIENS**—limited to five years. **MECHANIC'S LIENS**—to be filed in six months; three months in case of tenancies, alterations, etc., foreclosure within two years; limit of lien, five years. **MORTGAGE**—redemption, three months; may be extended one year on filing notice of agreement. **TAX**—redemption limited to two years.

§ 312. **Philippine Islands**—**ACKNOWLEDGMENTS**—taken by notaries. **HOMESTEAD**—exemptions, 150 pesos. **JUDGMENT**—and executions limited to five years. Redemption by debtor within one year. **WILLS**—any one of sound mind of legal age can make a will. Must be in writing, signed by the testator or by someone in his presence and at his request and direction, attested and subscribed in his presence by three credible witnesses.

§ 313. **Porto Rico**—Property is divided into movable (personal) and immovable (realty). Ownership is acquired by retention, and transmitted by gift, by testate or intestate succession and in consequence of certain contracts by tradition. Things are acquired by retention, which can be appropriated by reason of their nature, viz.: those having no owners, such as animals which are the object of hunting and fishing, hidden treasure, and abandoned property. Succession is the transmission of the rights and obligations of a deceased person to his heirs. May be disposed of by will. All persons over fourteen years may dispose by will if of sound mind. Ordinary wills may be holographic, open or closed. Military and marine wills are special.

ACKNOWLEDGMENTS—notaries and commissioners can take. **WITNESSES**—three to a will. **WILLS**—notary and witness must know the testator. Persons blind, or unable to read, cannot make a will. Deaf and dumb who can write may execute a closed will. It must be written entirely and signed by the testator, stating place, day and month. The notary certifying same, then delivers it to the testator, retaining a certified copy in his private protocol. If testator leaves his with the notary, latter to give a receipt for same, and make a memorandum. It must be presented in court within ten days of the testator's death. A closed will must have five witnesses, three of whom must be able to sign. The testator must state what it is, who wrote it and what changes and interlineations have been made. Statement must be made in the presence of the witnesses. All of which the notary must note on the back of the envelope, with a note of the number of seals on outside and that every legal requirement has been complied with, that the testator is known to him, that he is capable of making same. The memorandum shall be read to the testator signed by the testator and the witnesses. Notary must authenticate with his name and seal. A holographic will is written by the testator in his own hand and signed by him and dated. The party receiving it must within ten days of the death of the testator present same to the district court; otherwise he is liable. The notary and witnesses must be present when proven in court. An open will is one in which the testator expresses his desire in the presence of the persons who must authenticate it; must be executed by a notary in presence of three witnesses; must be read aloud to the testator; signed by all; one of the witnesses can sign for the testator, the notary stating same; must be read thrice if party is blind. A closed will is one sealed and delivered by the testator, in an envelope, sealed with wax, to the parties whom he wishes to authenticate it, declaring it to be his last will and testament. No one can be a witness to a will who is under the age of fourteen, a nonresident of the place of its execution, blind, deaf or dumb, unfamiliar with the language of the testator; criminals or those convicted for forgery, perjury; clerks, amanuenses, servants, relatives within the fourth degree of consanguinity or second of affinity of the notary who authenticates the will; neither heirs, legatees named in an open will, nor the relatives of the same within the fourth degree of consanguinity or second of affinity. The notary and two witnesses must know the testator or have him identified by two witnesses. They must be sure the testator has legal capacity. The burden of proof falls on them when the will is proved. It must be written in English and Spanish. Wills may be executed without a notary, in the presence of three witnesses over sixteen years of age, but must be reduced to writing by a notary within two months. If the testator die before, application must be made, within three months after, to the proper court to have same reduced to writing. All interlineations in the wills must be fully explained in the document. **CONJUGAL PARTNERSHIP**—exists by

virtue of marriage and property acquired belongs to husband and wife share and share alike. Husband is administrator. Cannot sell or bind real estate without consent of wife. Separation of property only by judicial decree. Conveyances by consent of both parties.

§ 314. **Rhode Island**—ACKNOWLEDGMENTS—WITHIN THE STATE—to be before any state senator, judge, justice of the peace, mayor, notary public, town clerk, or recorder of deeds. OTHER STATES—before any judge, or justice of a court of record or other court, justice of the peace, mayor or notary of the state, district of Columbia, or territory, in which it is made, or before a commissioner of deeds appointed by the governor of this state, provided, that if proved in the manner prescribed by the laws of the state, etc., where executed, it shall be deemed to be legally executed, and shall have the same effect as if executed as above described. WITHOUT THE UNITED STATES—may be taken before any United States ambassador, minister, charge d'affaires, consul general, vice consul general, consul, vice consul, consular agent, or commercial agent, or before any commissioner appointed by the governor of this state in the country where the acknowledgment is taken, provided that such acknowledgment may also be made within or without the limits of this state by any person actually engaged in the military or naval service of the United States, before any colonel, lieutenant colonel, or major in the army, or any officer in the navy not below the grade and rank of lieutenant commander. PERSONALLY KNOWN—and personally to appear (or proved) to officer, is required. WITNESSES—none to deeds; two or more to wills. PRIVATE SEALS—abolished. WOMEN—married, may convey same as if single. No separate examination; to be free act and deed; may convey directly to or receive from her husband. DOWER AND CURTESY—one-third in fee simple, one-half if no issue, and is conveyed by jointure. POWER OF ATTORNEY—may be made by acknowledging and signing same as by deed. MORTGAGE—redemption, two months as to personalty; real estate within three years after entry. TAX—redemption, one year. MECHANIC'S LIEN—limited to six months; notice within 60 days. JUDGMENTS—issue at once.

§ 315. **South Carolina**—ACKNOWLEDGMENTS—IN THIS STATE—a deed to be entitled to record must be proved by the affidavit of a subscribing witness before an officer in this state competent to administer an oath, a commissioner appointed by dedimus of the county common pleas court clerk, a commissioner of deeds of this state, clerk of a court of record under his official seal, a notary under his official seal accompanied by the certificate of his official character, by a clerk of a court of record of the county where affidavit is made, or before a minister, ambassador, consul general, consul, vice consul or consular agent of the United States. If the witness be dead or not accessible, the instrument may be proved on the handwriting of the parties. WITNESSES—two required, in the presence of whom the

release is to be made and signed and indorsed by county auditor; three to a will. PRIVATE SEALS—scroll required. WOMEN—any married woman may convey. CURTESY—abolished. HOMESTEAD—\$1,000 allowed; conveyed by jointure. POWER OF ATTORNEY—married women may so convey their separate estates. DOWER—one-third. Wife may renounce by separate instrument, husband to join in the deed. Separate examination required that she freely and voluntarily without compulsion conveys. ACTION—to recover land limited to ten years. Must have had possession in forty years or ancestors. ESTATES TAIL—limited to life in being. DEED—to be recorded. JUDGMENT LIEN—limited to twenty years. MORTGAGE—redemption in one year. MECHANIC'S LIEN—filed within ninety days, enforced within six months. TAX—redemption, six months; quieted in ten years.

§ 316. South Dakota—ACKNOWLEDGMENTS—IN THE STATE—taken before a justice or clerk of the supreme court or notary anywhere, before a judge or clerk of the circuit, municipal or county court, mayor of a city, register of deeds, justice of the peace, United States district court commissioner, county auditor, within their jurisdiction. OUT OF THE STATE—before a justice, judge or clerk of any court of record of the United States, a justice, judge or clerk of any court of record of any state, a notary, or any officer so authorized by the state where the same is being taken, a commissioner of deeds appointed by the governor of this state. WITHOUT THE UNITED STATES—can be taken before an ambassador, minister, commissioner, or charge d'affaires of the United States, resident or accredited to the country where same is taken, a consul, vice consul, consular agent of United States therein resident, a judge, clerk, register or commissioner of a court of record, a notary public, an officer authorized by the laws of the country where acknowledgment is taken, their deputy, if they are authorized to have such. Acknowledgment of party or corporation must be made to the instrument before it can be recorded. PERSONALLY KNOWN—to the officer, or identity proved on oath or affirmation of a credible witness. Officer must affix his name, office and seal to the instrument. WITNESSES—two to a will; none required to deeds. Execution of instrument may be proved by subscribing witness. PRIVATE SEALS—abolished. WOMEN—married, convey as if single. Age to convey, eighteen. Separate examination not required. DOWER AND CURTESY—abolished. Property descends to surviving spouse and child, or issue of child, in equal shares. If more than one child, one-third to spouse and remainder to children or issue in equal shares. HOMESTEAD—160 acres, or one acre within town plat is exempt. Conveyance jointly, or by separate instruments, if both husband and wife sign. POWER OF ATTORNEY—to convey lands acknowledged and recorded, same as by deed, is valid. ACTION—to recover land limited to twenty years. JUDGMENT—redemption, one year; lien limited to ten years. MECHANIC'S LIEN—redemption,

one year. MORTGAGE—redemption, one year. TAX—redemption, two years.

§ 317. **Tennessee** — **ACKNOWLEDGMENTS** — **WITHIN THE STATE**—before the county clerk or his legal deputy, or a notary public. **IN ANOTHER STATE**—before a commissioner for this state, a notary public, any court of record or clerk of such court. **IN A FOREIGN COUNTRY**—before a commissioner for this state, a notary public, a United States minister, consul, or ambassador. If made before a notary, commissioner, consul, minister or ambassador he shall certify under his seal of office. If made before a judge, he shall make the certificate and his court clerk shall certify it under his seal of office; if there be no seal, then under his private seal, stating the official character of the judge, or it may be certified by the governor. If made before a court of record, a copy of the entry on the record shall be certified by the clerk under his seal of office; if there be no seal, then under his private seal and the judge, chief justice or presiding magistrate shall certify to the character of the clerk. If before a clerk of a court of record of another state, and certified by him under his seal of office, the judge, chief justice or presiding magistrate of the court shall certify to the official character of the clerk. **PERSONALLY KNOWN**—or identified to the officer and personal appearance required. **WITNESSES**—none, if acknowledged, otherwise, two; two to will. **PRIVATE SEALS**—abolished. **WOMEN**—age to convey, twenty-one. Can convey her separate estate without husband's consent. Separate examination required whether conveying jointly with husband or conveying separate estate. Commission for privy examination of wife may issue, if sick, aged or unable to appear. Personal acquaintance with married woman who acknowledges need not be shown in certificate. **DOWER AND CURTESY**—one-third for life. **HOMESTEAD**—exemption, \$1,000; conveyed by jointure. **POWER OF ATTORNEY**—can convey by same as by deed; privy examination necessary. **ACTION**—to recover land limited to twenty years. **ESTATES TAIL**—abolished to fee simple. **JUDGMENT**—redemption, two years; lien limited to ten years. **MECHANIC'S LIEN**—redemption, two years. **MORTGAGE**—redemption, two years; lien limited to ten years. **TAX**—redemption, two years; lien limited to six years. **TRUST DEEDS**—used as mortgages.

§ 318. **Texas**—**CONVEYANCES**—must be in writing, subscribed to and delivered by the party or his authorized agent. **ACKNOWLEDGMENTS**—**IN THIS STATE**—or proofs of instruments in writing, may be taken before a clerk of the district court, a judge or clerk of the county court, a notary public. **IN ANY OTHER STATE**—before a clerk of a court of record having a seal, a commissioner appointed by the governor of this state, a notary public. **IN FOREIGN COUNTRIES**—before a minister, commissioner, or charge d'affaires, of the United States resident, a consul general, consul, vice consul, commercial agent, vice commercial agent, deputy consul or consular agent of the United States resident, a notary public. Grantor must appear

in person before the officer and state that he executed the same for the consideration and purposes therein stated. The officer shall make a certificate, sign and seal it with his seal of office. **PERSONALLY KNOWN**—to the officer, or their identity sufficiently proven on the oath or affirmation of a credible witness, which shall be noted on his certificate. **WITNESSES**—two required to deeds unless acknowledged before an officer and certified to by him; two to a will; three to nuncupative will. **PRIVATE SEALS**—abolished, except of corporations. **WOMEN**—age to convey, twenty-one, or marriage, husband to join in conveying her separate estate. Married woman shall have the instrument shown and explained to her by the officer, be examined separate and apart from her husband, and acknowledge the same to be her act and deed, willingly signed, that she does not wish to retract it. **DOWER**—none; community system. **CURTESY**—none; have community system. **HOMESTEAD**—exemption, 200 acres; or \$5,000 in city, town or village, wife to join in its conveyance, signing and acknowledging separately. **POWER OF ATTORNEY**—to be recorded. A will conveying land in this state, probated according to the laws of any of the United States or territories, a copy thereof and its probate, attested by the clerk of the court where probated, with the seal of the court attached, and a certificate of the judge or magistrate of such court, that the attestation is in due form, may be filed and recorded in the county register of deeds where the real estate is situated, as deeds and conveyances are, without further proof or authentication, provided the same may be contested any time within four years, as the original will might be. **ACTION**—to recover land limited to ten years. **JUDGMENT**—redemption, one year; lien limited to ten years. **MECHANIC'S LIEN**—redemption, one year; contractor must file claim in four months, laborers and others in thirty days; sale in twelve months. **MORTGAGE**—redemption, thirty days. **TAX**—redemption, two years.

§ 319. **Utah**—**CONVEYANCES**—are by deed, signed by the grantor, if of age, or his lawful agent. **ACKNOWLEDGMENTS—IN THE STATE**—must be taken before some judge or clerk of a court having a seal, a notary public, county clerk or county recorder. **IN ANY OTHER STATE**—or territory, by a judge or clerk of a court having a seal, or by a notary public or commissioner appointed by the governor of this state. **IN A FOREIGN COUNTRY**—by some judge or clerk of a court of the country having a seal, or any notary, United States ambassador, minister, commissioner or consul resident. The officer's authorized deputy may take. The judge or clerk of court shall attach the court seal. The officer who has a seal of office shall attach his seal. **PERSONALLY KNOWN**—the certificate to state the fact of acknowledgment, that the person making it was personally known to the officer, or was proved such by oath or affirmation of a credible witness whose name shall be inserted in the certificate. **PRIVATE SEALS**—are abolished. **WITNESSES**—none to deeds, although deed may be proved by subscribing witness if there is one;

two to wills. **WOMEN**—age to convey, eighteen. Married women may convey their separate property when acknowledged or proved and certified to, without further proof. Separate examination of wife not required. **DOWER AND CURTESY**—wife has one-third interest in husband's lands after marriage. **HOMESTEAD**—exemption, \$1,500 to head of family, \$500 to wife and \$250 each child, and all personal property; conveyed by jointure. **POWER OF ATTORNEY**—to convey property must be acknowledged or proved, certified and recorded. The revocation must also be recorded. A conveyance legally acknowledged or proved and certified may be read in evidence without further proof. **ACTION**—to recover lands limited to seven years. Husband and wife can contract with each other as if single. **JUDGMENT LIEN**—limited to eight years. **MECHANIC'S LIEN**—claim to be filed in sixty days by original contractor, in forty days by others; action within one year. **MORTGAGE**—redemption, six months. **TAX**—redemption, four years.

§ 320. **Vermont—ACKNOWLEDGMENTS—IN THE STATE**—may be taken before town clerks, justices of the peace, notary public, master in chancery, county clerk, judge or register of probate. The notary's acknowledgment shall be valid without his official seal being affixed to his signature. **OUT OF THE STATE**—if certified according to the laws of the state, province or kingdom where taken, shall be valid proof of the same, may be taken and acknowledged before a justice, magistrate or notary public within the United States, or in a foreign country, or before a commissioner appointed for that purpose by the governor of this state. **IN A FOREIGN COUNTRY**—before a minister, charge d'affaires, consul or vice consul of the United States. **PERSONALLY KNOWN**—or proved to the officer, and personal appearance, required. **WITNESSES**—three to a will; two to a deed. **PRIVATE SEALS**—scroll required. **WOMEN**—age to convey, eighteen. Husband must join in conveying her estate. Separate examination of wife is not required. **DOWER AND CURTESY**—estates in lieu of, exist. **HOMESTEAD**—\$500; conveyed by jointure. **POWER OF ATTORNEY**—can convey by; must be signed, sealed, witnessed, acknowledged, recorded. A grantor or lessor refusing to acknowledge his deed or lease may be cited before a justice of the peace with right of appeal. The deed or lease may be recorded in the meantime and be effectual for sixty days, and if the proceedings for proving are still pending, the record may stand until six days after the termination of the suit. Vendor shall within six months after request record his title, or liable to be cited before a justice and may be committed for refusal and liable in an action at law for damages. Where the grantor or lessor dies or leaves the state without acknowledging his deed, the execution may be proved by the testimony of a subscribing witness before a judge of the supreme, superior or county court; and if all the witnesses are dead or out of the state, it may be proved before such courts on the handwriting of the grantor and of a subscribing witness, or adducing other evidence to the satisfaction of the court; such evidence entered on such deed or annexed thereto shall be equivalent to the grantor's or lessor's acknowl-

edgment. ACTION—to recover land limited to fifteen years. MECHANIC'S LIEN—continues three months. Notice must be filed and action instituted. MORTGAGE—redemption, one year, unless the value of property is less than incumbrance, then in discretion of court. TAX SALE—redemption, one year. JUDGMENTS—do not create a lien. The lien is created by the attachment which holds for thirty days after judgment on personal property and five months on real property.

§ 321. Virginia—ACKNOWLEDGMENTS—may be taken by a clerk of the court, a justice, commissioner in chancery of a court of record, or a notary within the United States, or a commissioner appointed by the governor within the United States, clerk of any court out of this state within the United States, or under official seal; any ambassador, minister plenipotentiary, minister resident, charge d'affaires, consul general, consul, vice consul, or commercial agent appointed by the government of the United States to any foreign country, or the proper officer of any court of such officer, the mayor or other chief magistrate of any city, town, or corporation therein. Notary must state when his term expires ("My term expires—"). Married woman must plainly indicate name commissioned under. Notaries public or other officers who are stockholders in a corporation can take its acknowledgments, provided they are not otherwise interested. Acknowledgments taken outside the state by a notary must be certified as to his official character by any court of record, the mayor, or chief magistrate of any county, city, town or borough, or under the great seal of the state, kingdom, etc., where the notary resides. PERSONALLY KNOWN—or identified to officer, is required. WITNESSES—two to a deed or will. PRIVATE SEAL—scroll required. WOMEN—can convey separate estate. May unite with husband to dispose of dower. Minor wife may sell by court proceedings. Separate examination of wife not required. DOWER AND CURTESY—one-third life, and are conveyed by jointure. HOMESTEAD—exemption, \$2,000; conveyed by jointure. POWER OF ATTORNEY—may convey by power of attorney, husband to join wife if outside the state, same as by deed, acknowledged, signed in presence of two witnesses, and recorded. ACTION—to recover land limited to fifteen years. ESTATES TAIL—limited to life in being. JUDGMENT LIENS—limited to twenty years. MECHANIC'S LIENS—limitation of suit to enforce, twelve months. TAX—redemption and limitation, five years.

§ 322. Washington—ACKNOWLEDGMENTS—IN THIS STATE—may be taken before a judge of the supreme court, the clerk, deputy clerk, judge of the superior court, clerk or deputy thereof, a justice of the peace, county auditor or deputy, a notary public or United States commissioner. IN ANY OTHER STATE—same form as prescribed in this state, and before anyone there authorized, or any commissioner appointed by the governor of this state for such purpose. Unless it be taken before a commissioner or by the clerk of the court of record or by a notary public or other officer having a seal of office, it shall have attached a certificate of the clerk of the court of record, under

the seal of said court of said county or district, or a certificate of any other proper certifying officer of the county or district that the person was such officer, that he is authorized and that he believes the signature genuine. IN FOREIGN COUNTRIES—before any minister plenipotentiary, secretary of legation, charge d'affaires, consul general, consul, vice consul or commercial agent of the United States, or before the proper officer of any court of the country, or a mayor or chief magistrate of any city, town or municipal corporation or a notary. The person taking shall certify by writing on, or annexing to, the instrument, under his official seal, in substance, that the instrument was acknowledged by the persons whose names are signed thereto as grantors before him as such officer with the date of such. Such certificate shall be prima facie evidence of the facts stated. Same shall be admitted to record in this state. Certified copies by the county auditor shall be received in evidence. INDIAN—conveyances shall be by deed, acknowledged before a judge of a court of record. The judge shall explain to the grantor the contents and the effect and so certify in the acknowledgment, shall duly examine and approve same before record. PERSONALLY KNOWN—or identified to the officer and personal appearance required. WITNESSES—two required to a deed or will. PRIVATE SEALS—abolished. WOMEN—age to convey, eighteen or when married. Can convey their own separate property same as the husband. Separate examination not required. DOWER AND CURTESY—community system prevails. HOMESTEAD—dwelling house and land on which situated; conveyed by jointure. POWER OF ATTORNEY—conveyance by, to be acknowledged, signed and recorded, same as a deed. Either husband or wife can so convey their separate property. ACTION—to recover land limited to ten years. JUDGMENT—redemption, one year; lien limited to seven years. MECHANIC'S LIEN—foreclosure within eight months. MORTGAGE—redemption, one year; lien seven years. TAX—redemption, three to four years; lien seven years.

§ 323. West Virginia—ACKNOWLEDGMENTS—IN THE STATE—DEEDS, CONTRACTS—powers of attorney or other writings to be admitted to record, shall be acknowledged by the grantor or proved by two witnesses. IN THE UNITED STATES—instruments recorded upon the certificate of acknowledgment of a justice, notary, recorder, prothonotary or clerk of any court within the United States, or a commissioner appointed by the governor of this state, written or annexed to the same. IN A FOREIGN COUNTRY—before and under the hand and official seal of any minister plenipotentiary, charge d'affaires, consul general, consul, deputy consul, vice consul, consular agent, vice consular agent, commercial agent or vice commercial agent, appointed by the government of the United States to such country, or of any proper officer of any court of such country, the mayor, or chief magistrate of any city, town or corporation therein. PERSONALLY KNOWN—the grantor's writing to be acknowledged or proved by two witnesses before a notary; same stated in the certificate of acknowledgment. WITNESSES—none to deed if acknowledged, two if not; two to a will.

PRIVATE SEALS—scroll required. WOMEN—age to convey, twenty-one; married convey as if single. Separate examination not required. DOWER AND CURTESY—one-third. Conveyance by jointure of husband and wife. HOMESTEAD—exemption, \$1,000. POWER OF ATTORNEY—convey by, same as by deed. ACTION—to recover land limited to ten years. ESTATES TAIL—limited to life in being. JUDGMENT—limitation, ten years. MECHANIC'S LIEN—record in sixty days; foreclosure within nine months. TAX—redemption, one year. LIENS—all limited to ten years for closing.

§ 324. Wisconsin—ACKNOWLEDGMENTS—conveyance of land is by deed, signed, sealed and acknowledged. IN THE STATE—taken before judges of courts of record, clerk of, court commissioner, county clerk, register of deeds, notary, justice of the peace, commissioners of the United States federal and district courts in the state, police justices. OUTSIDE THE STATE—any officer so authorized by the laws of that state. Signed and sealed. Certificate of secretary of state or clerk of the county court of record, under their official seals, to be attached, stating that the officer taking was at the time so authorized. May be executed according to the laws of the state and acknowledged before any judge or clerk of a court of record, notary public, justice of the peace, master in chancery, or other officer so authorized by the state, or before a commissioner appointed by the governor of this state. In a military post, by its commanding officer. Acknowledgments, unless taken by a commissioner, a clerk of a court of record, with its seal attached, a notary with his seal attached, or the commanding officer of a military post, shall have attached the certificate of the clerk, or other proper certifying officer of a court of record of the county or district, under his seal of office, stating that the person subscribing to the certificate of acknowledgment was such officer at the date thereof, that he believes the signature genuine and acknowledged according to the laws of the state. The commissioner, clerk of court, notary or commanding officer, shall state if it is executed according to the laws of the state. OUTSIDE THE UNITED STATES—any officer authorized by the laws of this state, any United States ambassador, minister, envoy or charge d'affaires, commissioner of state, notary public, consular officer, agent appointed, under their hand and seal of office. Notaries' certificate to state that it was acknowledged according to the laws of the country. PERSONALLY KNOWN—to and personal appearance before the officer required or proved. WITNESSES—two to a deed or will. PRIVATE SEALS—the word "Seal" or initials "L. S." is sufficient. MARRIED WOMAN—of full age, eighteen, may convey her lands jointly or separately from her husband, same as if she were unmarried. No separate examination necessary. Insane wife's dower released upon petition of husband to the court, within twenty to sixty days. DOWER—one-third for life; conveyed by wife as if unmarried, jointly or separately from husband. CURTESY—one-third for life. HOMESTEAD—exemption, 40 acres, or one-fourth acre in city or village of value of \$5,000. Conveyance, wife must join. POWER OF

ATTORNEY—so conveyed when acknowledged, signed and recorded same as a deed. **ACTION**—to recover land limited to twenty years. Deeds recorded pass title. **ESTATES TAIL**—limited to lives in being. **JUDGMENT**—redemption, one year; lien limited to ten years. **MECHANIC'S LIEN**—filed in thirty or sixty days, or six months, redemption, one year after for suit. **MORTGAGE**—redemption, one year. **TAX**—redemption, three years.

§ 325. **Wyoming**—Conveyance of land may be by deed signed by the grantor if of age, or by his agent or lawful attorney, acknowledged or proved and recorded. **ACKNOWLEDGMENTS—IN THE STATE**—before any judge or clerk of a court of record, or a court commissioner appointed under or by authority of the laws of the United States, county clerk, justice of the peace, or notary, the officer shall certify with the date under his hand and seal of office if he have one. **OUTSIDE THE STATE**—by any officer authorized by the state or country under his official seal, if he have none his certificate must be authenticated by the clerk of a court of record or a county clerk having a seal, certifying that he is authorized to take, that his signature is genuine. Notaries public and justices of the peace and commissioner of deeds for Wyoming shall add the date their commission expires. **IN FOREIGN COUNTRIES**—before a consul general, consul, or vice consul of the United States, same to certify over their hand and official seal. **PERSONALLY KNOWN**—to officer required. **WITNESSES**—one to a deed; two to a will. **PRIVATE SEALS**—abolished, except those of corporations. **WOMEN**—age to convey, twenty-one years. Can convey separate estate. Acknowledgment same as if sole, to sign and acknowledge, freely and voluntarily. She shall be fully apprised of the contents and her rights and the effect of her signing when homestead is released. **DOWER AND CURTESY**—abolished. Descent of property according to statute. **HOMESTEAD**—exemption, \$2,500. Wife to join in releasing it, and apprised of her rights. **POWER OF ATTORNEY**—can so convey; same manner as by deed. Husband or wife may constitute the other his or her attorney in fact. **ACTION**—to recover land limited to ten years. **JUDGMENT**—redemption, six months; lien limited to five years. **MECHANIC'S LIENS**—contractor files in four months, others in ninety days; limit of lien, six months. **MORTGAGE**—redemption, six months. **TAX**—redemption, three years.

§ 326. **Canada**—**ACKNOWLEDGMENTS—IN THE PROVINCE**—taken before register or deputy, magistrate, justice of the peace, judge or register of a court having a seal, or notary. **OTHER BRITISH PROVINCES**—judge of a court, clerk or register having a seal, notary, magistrate having a seal, any person so commissioned by the lieutenant governor. **OUTSIDE THE BRITISH DOMINIONS**—British ambassador, charge d'affaires, minister, consul, consular agent resident, judge of a court having a seal, a notary, certified as such by a British ambassador, charge d'affaires, minister, consul or consul agent, or the governor of the state, etc. Describe property clearly. **WITNESSES**—one to a deed; two to a will. **SEALS**—scroll seal to a deed.

CHAPTER IV.

DEPOSITIONS.

§ 327. **Definitions.**—A deposition is the testimony of a witness reduced to writing, in due form of law, by virtue of a commission or other authority of a competent tribunal, or according to the provisions of some statute law, to be used on the trial of some question of fact in a court of justice. In its generic sense, the term embraces all written evidence verified by oath, and includes affidavits, but in legal language, a distinction is maintained between depositions and affidavits.¹

A deposition *de bene esse* is one taken conditionally; when a witness is sick, unable to attend the trial, or likely to die. In such cases their testimony is taken conditionally, that they will attend the trial and give oral testimony if possible.²

Deposition *dedimus potestatem* is a writ issued by a court, judge or justice commissioning private persons to act as judge, examine a witness or such act. It means “we have given power.”³

Letters rogatory is an instrument sent in the name and by the authority of a judge of a court to another court, requesting the latter to cause to be examined, upon interrogatories filed in a cause pending before the former, a witness who is within the jurisdiction of the judge or court to whom such letters are addressed.⁴

A witness is one who gives oral testimony in a judicial proceeding. If his testimony be given by deposition, he is known as a “deponent”; if by affidavit, as an “affiant.”⁵

A subpoena, in practice, is a process to cause a witness to

¹ Cyc. Law Dict.

² Clark v. Dibble, 16 Wend. (N. Y.) 603.

The taking of depositions *de bene esse* are in the nature of the old chancery practice relating to a bill of discovery, entitling the

party to sift the conscience of his adversary. Ex parte Brockman, 233 Mo. 135, 134 S. W. 977.

³ 2 Bl. Comm. 351.

⁴ Cyc. Law Dict.; In re Martinnelli, 219 Mass. 58, 106 N. E. 557.

⁵ Cyc. Law Dict.

appear and give testimony, commanding him to lay aside all pretenses and excuses, and appear before a court or magistrate therein named, at a time therein mentioned, to testify for the party named, under a penalty therein mentioned. This is called distinctively a subpœna *ad testificandum*. A subpœna *duces tecum* is one whereby the witness is commanded to bring with him books or papers in his possession or under his control, to produce the same in evidence.⁶

§ 328. Nature of Right to Take Depositions; Compliance with Statute.—The common-law courts had no power to issue commissions to take testimony, although such power was inherent in courts of equity. To remedy this inconvenience statutes have been enacted in the various states, authorizing the courts to issue such commissions, and accordingly the power exists in either courts of law or equity, but as a result the power is statutory in origin.⁷ Being a statutory privilege, the right to take and use a deposition can be exercised and enforced only in the manner and to the extent provided by statute.⁸ The right will not be enlarged by implication or construction,⁹ and the statutes authorizing the taking of depositions must be strictly complied with.¹⁰ The taking of a deposition to perpetuate testimony is not favored and the right to take must clearly exist.¹¹

⁶ Cyc. Law Diet.

⁷ Hill v. Thomas B. Jeffery Co., 292 Ill. 490, 127 N. E. 124; Bohen v. North American Life Ins. Co., — Iowa —, 177 N. W. 706.

The mode of trial at common law is by the production of witnesses and their oral examination in open court, and depositions can only be substituted by statutory authority. Hutchins v. Hutchins, 41 App. Cas. (D. C.) 367.

⁸ Lezinsky v. Superior Court, 72 Cal. 510, 14 Pac. 104; Burnett v. Prince, 272 Mo. 68, 197 S. W. 241; Taylor v. Thomas, 77 N. H. 410, 92 Atl. 740; State ex rel. Geissler v. Truax, 96 Wash. 1, 164 Pac. 597.

The right to take depositions is in derogation of the common law and will be strictly construed. Clark's Adm'r v. Wilmington Sav. Bank, 89 Vt. 6, 93 Atl. 265.

⁹ Ex parte Alexander, 163 Mo. App. 615, 147 S. W. 521.

¹⁰ Clegg v. Gulf, C. & S. F. Ry. Co., 104 Tex. 280, 137 S. W. 109; Clark's Adm'r v. Wilmington Sav. Bank, 89 Vt. 6, 93 Atl. 265.

The statute must be substantially complied with. Corgan v. Anderson, 30 Ill. 95.

¹¹ The preservation of evidence in this mode is not favored, and will be permitted only to prevent the failure of justice. Taking a deposition merely to ascertain the

The power to issue a commission rogatory, or letters rogatory, is inherent in courts to prevent the failure of justice, and is not dependent upon statutory provisions, but exists because of the international good will prevailing in all courts of civilized countries.¹²

§ 329. What Witnesses or Persons May Be Examined by Deposition.—Usually, the statutes merely provide for the examination of witnesses by deposition, without specifying further. It has been held that the word “witness” includes parties to the action who are competent and who may be compelled to give evidence.¹³ In some states, female witnesses are not obliged to testify in court as a general rule, and the statutes provide for the taking of their evidence by deposition.¹⁴ Usually, the witnesses who are examined by deposition are these who are aged, infirm, sick, or who live without the county of the place of trial, or who are about to journey to other states or countries.¹⁵

§ 330. Manner of Taking Depositions.—The party desiring the testimony makes affidavit to the court where the suit is in progress, or is to be tried, stating the cause, the name and residence of the witnesses whose testimony is desired, and the names of the adverse parties, or their attorney, and their place of abode. Also a list of interrogations to be put to the witness. The statement is also made as to why the witness cannot be present at the trial, which is usually age, infirmity, sickness, about leaving the county or state, resident of another county or state, etc. If the court or judge to whom the application is made is satisfied that the deposition is necessary, a commission to take issues under his hand and the seal of the court by the court clerk. Reasonable notice (usually determined by the court, but sometimes by statute) is given to the adverse

evidence in advance of the trial, and for the purpose of annoying and oppressing the adverse party, is an abuse of judicial authority and process. *Guinan v. Readdy*, 79 Okla. 111, 191 Pac. 602.

¹² *In re Martinelli*, 219 Mass. 58, 106 N. E. 557.

¹³ *McAlpin v. Ryan*, 150 Ga.

746, 105 S. E. 289 (construing Acts 1898, p. 56, § 1, amending Civ. Code 1895, § 5315, Civ. Code 1910, § 5910).

¹⁴ *Bennett v. Patten*, 148 Ga. 66, 95 S. E. 690.

¹⁵ See post, § 350 *et seq.*, Statutory Requirements.

party, of the time and place of the taking, name or names of the witnesses, or their attorney of record, and their residences if known. A list of interrogations to be put, which list may be added to by the adverse party or his attorney in the nature of cross-interrogatories. On the return of which the court issues the commission inclosing same, with full instructions and a list of the interrogatories and cross-interrogatories, if any, sending same to the commissioner, selected either by the parties themselves or by the court.

At the appointed day, place and hour, the commissioner calls the court to order, swears the witness to tell the truth, the whole truth, and nothing but the truth. The prepared interrogatories are then answered by the witness, writing same under each question, in the presence of the commissioner, or by some one appointed by him in his presence. The statute regulates the presence of the parties to the case, either in person or by attorney. Usually where the testimony is taken by written interrogatories, the parties or their attorneys are absent. After the deposition is taken it is read to or by the witness, errors corrected, and then signed by him. The commissioner then adds his certificate, stating in it that the party deposing was duly sworn by him before taking, that the interrogatories were answered and subscribed to in his presence, adding who were present, either attorneys or parties in the case. Some states permit it being taken in shorthand and afterwards typewritten. Signed by the commissioner. The deposition and all papers connected with the taking are then inclosed in an envelope, sealed, the title of the case and the commissioner's name indorsed on the back over the seal, directed to the court issuing the commission, or if the parties have so agreed, to the party who instituted the taking. Otherwise they are mailed or delivered in person to the clerk of the court, who notes the time of their receipt and party delivering, on the envelope, and places the same on file for use when called for by the court, or the parties.

Being of statutory origin, the requirements as to the manner of taking depositions vary in the different states. The more general requisites will, however, be referred to in detail.

§ 331. Taking Depositions for United States Courts.—Depositions may be taken before a notary public in any civil cause

pending in a United States, district or circuit court, when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which the case is to be tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial, or when he is aged and infirm. Any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify in court.¹⁶ Every person deposing shall be cautioned and sworn to testify the whole truth, and carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or by himself in the magistrate's presence, and by no other person, and shall, after it has been reduced to writing, be subscribed by the deponent.¹⁷

In addition to the mode of taking the depositions of witnesses in causes pending at law or equity in the district and circuit courts of the United States, it shall be lawful to take the depositions or testimony of witnesses in the mode prescribed by the laws of the state in which the courts are held.¹⁸ Every deposition taken shall be retained by the magistrate taking it until he delivers it with his own hand into the court for which it is taken; or it shall, together with a certificate of the reasons as aforesaid of taking it and of the notice, if any, given to the adverse party, be by him sealed up and directed to such court, and remain under his seal until opened in court.¹⁹

§ 332. Interrogatories.—Where a deposition is taken in conformity to a statute providing for interrogatories, direct and cross, in writing, the court has no power to permit oral cross-examination.²⁰ In some states, the party may elect to take upon oral interrogatories, and when such election is had, a deposition taken upon written interrogatories may be suppressed.²¹

¹⁶ U. S. Rev. Stat. 1878, sec. 863.

¹⁷ *Id.* sec. 864.

¹⁸ *Id.*, supp., vol. 2, p. 4; *Ex parte Fisk*, 113 U. S. 713, 28 L. Ed. 1117, 5 Sup. Ct. 724.

¹⁹ U. S. Rev. Stat. 1878, sec. 865.

²⁰ *Burnham v. Stouutt*, 35 Utah 250, 99 Pac. 1070.

²¹ *Lewis v. Fish*, 40 Ill. App. 372.

Some statutes authorize the interrogatories to be written or oral or partly written and partly oral, and in such case it has been held that the duty of determining the mode of hearing devolves upon the court.²² The oral method is not favored, however.²³ When both the oral and written interrogatories are provided for, the statutes do not contemplate the issuing of two depositions, one to take testimony upon written and the other upon oral interrogatories.²⁴

Under the Florida statutes the interrogations put to the adverse party is, like a bill of discovery in equity, in aid of an action at law, and limited to the support of the case or defense of the party propounding and cannot extend to the whole case.²⁵

§ 333. Who Can Take Depositions; Issuance of Commissions.—As a primary rule the person taking a deposition must be one authorized by law to act.²⁶ The statutes usually state what officers are authorized to take depositions, and also usually provide for the appointment of commissioners to perform such duties.²⁷ It has been held that where the statute enumerates certain officers, such as notaries, judges, justices of the peace or commissioners, the court is not required to select a

²² State ex rel. Geissler v. Truax, 96 Wash. 1, 164 Pac. 597.

²³ State ex rel. Geissler v. Truax, 96 Wash. 1, 164 Pac. 597.

²⁴ Lewis v. Fish, 40 Ill. App. 372.

²⁵ Jacksonville, T. & K. W. Ry. Co. v. Peninsular Land, Transp. & Mfg. Co., 27 Fla. 1, 157, 9 So. 661, 17 L. R. A. 33, 65.

²⁶ King v. Green, 7 Cal. App. 473, 94 Pac. 777.

²⁷ See post, § 350 *et seq.*, Statutory Requirements.

A county judge or court commissioner may take the deposition of witnesses residing within his county. Whereatt v. Ellis, 65 Wis. 639, 27 N. W. 630, 28 N. W. 333. Also a notary public. Toledo, W.

& W. Ry. Co. v. Baddeley, 54 Ill. 19, 5 Am. Rep. 71.

The Michigan statutes empower any court of record to appoint special commissioners before whom depositions may be taken. It is questionable whether a common order, entered by consent of parties and without the knowledge of the court can be regarded as an appointment. A notary being an attorney of the supreme court may perform the duties of circuit court commissioner when that officer is disqualified. Crone v. Angell, 14 Mich. 340.

Code Crim. Proc., art. 820, naming officers, does not authorize notary public in foreign state to take deposition. Porter v. State, 81 Tex. Cr. 240, 190 S. W. 159.

commissioner of deeds, but may issue a commission to any person deemed competent.²⁸ This is the meaning of the word "commissioner."

When a commission is issued, the person who is to take the testimony should be named, unless the commission is directed to an officer authorized by statute, by his official title.²⁹ Some of the cases hold that even where directed to an officer of one of the classes enumerated by statute, the particular one must be selected by the court or officer issuing the commission.³⁰ When the commission is directed to a person named, such person derives his authority from the appointment, and his official capacity is immaterial.³¹ In other words, his authority is derived from the court where the cause is pending.³²

A general order to take depositions when officially signed by the judge, clothes with authority and is sufficient.³³ It is sufficient evidence of the identity of the person named, when after taking and returning the deposition, he certifies that he acted pursuant to the commission.³⁴ He is not required to certify anything in respect to his commission. The commission shows an authority to take.³⁵ No certificate of his official character is required. Consuls of the United States are not

²⁸ *Alcorn v. Gieseke*, 158 Cal. 396, 111 Pac. 98 (construing Code Civ. Proc. § 2024).

²⁹ *King v. Green*, 7 Cal. App. 473, 94 Pac. 777.

Depositions may be taken before any disinterested person as commissioner, who may be designated by the name of the office which he holds as well as by his proper name. *Brown v. Luehrs*, 79 Ill. 575.

An objection that a deposition was not directed to a notary by name will be overruled. *Welborn v. Faulconer*, 237 Mo. 297, 141 S. W. 31.

The party suing out the *dedimus* is not required to give the name

of the commissioner. *Cole v. Choctau*, 18 Ill. 439.

³⁰ *De Renzes v. His Wife*, 115 La. 675, 39 So. 805, 2 L. R. A. (N. S.) 1089, 5 Ann. Cas. 893. See also *Argentine Falls Silver Min. Co. v. Molson*, 12 Colo. 405, 21 Pac. 190; *Newton v. Brown*, 1 Utah 287.

³¹ *B. Schwinger & Co. v. Redman*, 187 Ill. App. 254.

³² *Burnett v. Prince*, 272 Mo. 68, 197 S. W. 241.

³³ *Bradford v. Cooper*, 1 La. Ann. 325.

³⁴ *Brown v. Luehrs*, 79 Ill. 575.

³⁵ *Kendall v. Limberg*, 69 Ill. 355.

required to be commissioned in order to take depositions.³⁶ In some states, deputies are authorized to take depositions. Where such a provision existed in one state, and there was a constitutional provision requiring deputies to act in the name of their principal, it was held that a deputy district clerk was not authorized to take a deposition in his own name, and that he could only do so by using the name of the clerk, by himself as deputy.³⁷

§ 334. Authority of Officer to Take Deposition.—An officer who takes a deposition acts in a judicial capacity,³⁸ and if a person is named in a commission, the appointment carries with it all the powers necessary to execute the commission, including the power to administer oaths.³⁹ Before the notary or person named can act, the preliminary statutory matters must be complied with, however, such as the provisions concerning affidavits and notice.⁴⁰ When appointed, the officer has no authority to enter into any inquiry concerning the good faith of the litigants. He cannot propound questions to determine whether the action was brought in good faith before requiring the witnesses to answer.⁴¹

§ 335. Taking Depositions Outside of State.—A notary public taking depositions in one state, to be used in a suit pending in another, can in no sense be regarded as an instrument or agency of the court wherein such suit is pending. Neither the notary nor any of the parties appearing before him are answerable to the court for anything said or done

³⁶ *Semmens v. Walters*, 55 Wis. 675, 13 N. W. 889; 2 U. S. Rev. Stat. (2d Ed.) 1750. *Herman v. Herman*, Fed. Cas. No. 6407, 4 Wash. C. C. 555.

A commission issued in the usual form to a consular officer of the United States, and returned in due form, is *prima facie* admissible. *In re Derinza*, 229 Mass. 435, 118 N. E. 942, 16 N. C. C. A. 210.

³⁷ *Kirby Lumber Co. v. Long*, — Tex. Civ. App. —, 224 S. W. 906.

³⁸ *Burnett v. Prince*, 272 Mo. 68, 197 S. W. 241; *Redmond v. Quincy*, O. & K. C. R. Co., 225 Mo. 721, 126 S. W. 159.

³⁹ *B. Schwinger & Co. v. Redman*, 187 Ill. App. 254.

⁴⁰ A notary has no power to issue subpoenas until statute as to notice is complied with. *Burnett v. Prince*, 272 Mo. 68, 197 S. W. 241.

⁴¹ *Ex parte Brockman*, 233 Mo. 135, 134 S. W. 977.

while there, the whole matter being outside its jurisdiction. In taking the depositions, the notary performs purely ministerial functions. He can decide no questions nor determine any matter affecting the rights of the parties to the suit, nor is he connected with any court or other tribunal having the power to do so.⁴² It is not necessary to attach to his certificate any certificate of a clerk or other certifying officer as to official character.⁴³ If taken in another state on a day recognized as a legal holiday, it is not contrary to statutes.⁴⁴

§ 336. Disqualification Preventing Notaries from Acting.—A notary or other officer in taking depositions should be entirely disinterested, as he acts in a judicial capacity. The conscientious and intelligent notary will conduct this duty as fairly and impartially as a judge on the bench, and, if he fails to do so, the deposition may be impeached.⁴⁵ The rule that the officer must be impartial exists regardless of statute, and whatever gives to the relation the character of an employment by one party to the action will disqualify the officer.⁴⁶

If the relation of attorney and client is established between an officer or those whom he serves and the party in whose behalf the deposition is taken, the officer is disqualified.⁴⁷ It has been held, though, that the fact that a commissioner afterwards became a counsel of one of the parties and cross-examined the witness was not ground for exclusion of the deposition.⁴⁸

⁴² Greer v. Young, 120 Ill. 184, 11 N. E. 167.

⁴³ Sleep v. Heymann, 57 Wis. 495, 16 N. W. 17; Hayes v. Frey, 54 Wis. 503, 11 N. W. 695.

⁴⁴ Green v. Walker, 73 Wis. 548, 41 N. W. 534.

⁴⁵ Redmond v. Quincy, O. & K. C. R. Co., 225 Mo. 721, 126 S. W. 159.

⁴⁶ Clegg v. Gulf, C. & S. F. Ry. Co., 104 Tex. 280, 137 S. W. 109.

⁴⁷ Huntington Consol. Lime Co. v. Powhatan Coal Co., 44 Ind. App. 84, 87 N. E. 1047.

A notary who was counsel and

represented a witness in a suit against the same defendant, substantially identical with the one involved, held disqualified. Clegg v. Gulf, C. & S. F. Ry. Co., 104 Tex. 280, 137 S. W. 109.

Where a deposition was taken by a notary who was a business partner of one of the attorneys for the plaintiff, the deposition would be suppressed. Redmond v. Quincy, O. & K. C. R. Co., 225 Mo. 721, 126 S. W. 159.

⁴⁸ Park v. Zellars, 139 Ga. 585, 77 S. E. 922.

§ 337. **Affidavit to Take Deposition.**—A statute requiring a satisfactory affidavit to be filed when a witness resides in a different county should be substantially complied with, unless waived.⁴⁹ An affidavit of the materiality of the testimony is unnecessary where a general order has been granted by the judge, the defendant propounds, cross-interrogatories, and the defendant's generalities are vague.⁵⁰

§ 338. **Notice to Take Deposition.**—Notice of the time and place of taking of the deposition is usually required by statute, the purpose being to give the adverse party a fair opportunity to cross-examine the witness.⁵¹ The party who gives notice that he will sue out a *dedimus* to take the testimony upon written interrogatories, after receiving notice that the party to whom the notice was given has elected to take the deposition upon oral interrogatories, should reply with a notice of the time and place where the deposition will be taken, as the party desiring the testimony he should give notice of the time and place.⁵²

The statutes usually provide what notice is required. Thus some statutes require ten days' notice before suing out a *dedimus*,⁵³ and some statutes provide for notice by publication in certain cases.⁵⁴ Other statutes require a reasonable time to be allowed, and when such is the case, the length of time depends upon the circumstances.⁵⁵ Ordinarily, the notice must specify the residence of the witness who is to be interro-

⁴⁹ *Harman Coal Co. v. Cleveland, C. & St. L. R. Co.*, 172 Ill. App. 298.

⁵⁰ *Bradford v. Cooper*, 1 La. Ann. 325.

⁵¹ *Anderson v. Snyder*, 91 Conn. 404, 99 Atl. 1032; *Domenehinis Adm'r v. Hoosac Tunnel & W. R. Co.*, 90 Vt. 451, 98 Atl. 982.

Under the Louisiana code, notice of the time and place of taking is unnecessary when the defendant crosses the interrogatories. *Bradford v. Cooper*, 1 La. Ann. 325.

⁵² *Lewis v. Fish*, 40 Ill. App. 372.

⁵³ *Corgan v. Anderson*, 30 Ill. 95.

⁵⁴ Under the West Virginia Code, the publication of notice extends to four consecutive weeks, and is complete on the fourth issue of the paper containing it; it is sufficient if reasonable time elapses between the date of last publication and the taking. *Miller v. Neff's Adm'r*, 33 W. Va. 197, 10 S. E. 378, 6 L. R. A. 515.

⁵⁵ A notice served on Monday to take a deposition the following Wednesday at 8 a. m. at a place which, allowing one day for preparation, would require the adverse party to start from the place of service at midnight, and transfer

gated,⁵⁶ although an omission in this regard may not be material. In general, mere irregularities which are not prejudicial will not invalidate the deposition. Thus an error in stating the notary's address in the notice may be immaterial,⁵⁷ and if the deposition shows the testimony taken to be material and necessary, the omission of such fact in the notice will not invalidate the deposition.⁵⁸

§ 339. Compelling Attendance of Witnesses; Refusal to Testify; Contempt Proceedings.—In a large number of states, notaries authorized to take depositions have authority to commit for contempt in case of refusal to answer or to attend,⁵⁹ and the same power extends to other officers performing such duties.⁶⁰ The power does not exist in all states, however,⁶¹

to another railroad at night in order to be present Wednesday, does not afford a reasonable opportunity to attend. *Helms v. Southwest Missouri R. Co.*, 96 Kan. 568, 152 Pac. 632.

⁵⁶ *Rock Island Plow Co. v. Schoening*, 104 Minn. 163, 116 N. W. 356.

The residences of the witnesses may be stated in the notice and not in the caption of the interrogatories. *Semmens v. Walters*, 55 Wis. 675, 13 N. W. 889.

⁵⁷ *Squier v. Mitchell*, 32 S. D. 342, 143 N. W. 277 (where a notary's address was given as "12 South Main St." when it should have read "12 North Main St.").

⁵⁸ *Independent Dryer Co. v. Livermore Foundry & Machine Co.*, 60 Ill. App. 390.

⁵⁹ Alabama. Notary acts as justice of the peace and can imprison for contempt. *Coleman v. Roberts*, 113 Ala. 323, 21 So. 449, 36 L. R. A. 84, 59 Am. St. Rep. 111.

Kansas. A notary has no power to commit a witness for contempt for refusal to testify, and a statute conferring such power is in-

valid. In re *Huron*, 58 Kan. 152, 48 Pac. 574, 36 L. R. A. 822, 62 Am. St. Rep. 614.

Missouri. Notary may summon witness and enforce attendance. If he refuses to testify, the notary may imprison for contempt. *Ex parte Alexander*, 163 Mo. App. 615, 147 S. W. 521.

Nebraska. A notary public in the exercise of judicial functions given by law is a court and has power to commit for contempt under the constitution. *Dogge v. State*, 21 Neb. 272, 31 N. W. 929.

Ohio. A notary has power to imprison a witness for refusing to answer a question to a deposition. *DeCamp v. Archibald*, 50 Ohio St. 618, 35 N. E. 1056, 40 Am. St. Rep. 692.

⁶⁰ Judge of county court taking deposition has power to commit witness for contempt in refusing to answer material question. *Waugh v. Dibbens*, 61 Okla. 221, 160 Pac. 589.

⁶¹ A superior court cannot punish a person for contempt in refusing to answer a subpoena issued by a notary public, before whom

and difficulty arises frequently because of lack of jurisdiction to punish for contempt. If the court has jurisdiction of the witness it has inherent power to punish for contempt,⁶² and while a witness may decline to answer questions because of personal privilege, the witness cannot judge whether such questions are relevant or competent, and cannot refuse to answer on such grounds.⁶³ But the court cannot compel a witness to answer who is beyond the state, as it has no jurisdiction.⁶⁴

In some states statutes have been enacted permitting a resort to the courts when a resident witness refuses to answer, and authorizing the court to impose a fine or imprisonment for the refusal.⁶⁵ Such a statute will be sustained as valid under the principles of comity.⁶⁶

The United States supreme court has decided that one of the functions of a court is to compel a party to perform a duty which the law requires at his hands. The defendant is no more entitled to a jury than is a defendant in a proceeding

he was to appear and make deposition upon notice. *Lezinsky v. Superior Court*, 72 Cal. 510, 14 Pac. 104.

⁶² *Hill v. Thomas B. Jeffery Co.*, 292 Ill. 490, 127 N. E. 124; *Finn v. Winneshiek Dist. Court*, 145 Iowa 157, 123 N. W. 1066.

⁶³ *Finn v. Winneshiek Dist. Court*, 145 Iowa 157, 123 N. W. 1066; *Ex parte Alexander*, 163 Mo. App. 615, 147 S. W. 521.

⁶⁴ *Hill v. Thomas B. Jeffery Co.*, 292 Ill. 490, 127 N. E. 124.

⁶⁵ The statutes of Illinois empower notaries and other officers authorized to take depositions in any cause pending in courts of law or equity in the state, or by virtue of a commission issued out of any court of record in any other state, territory or country, to subpoena and compel the attendance of witnesses. On the refusal of witness to comply, the officer shall

report in writing the facts to the circuit court of such county, from which attachment shall issue against such witness, returnable forthwith before such court. If it appear to the court the refusal was without excuse, fine and imprisonment shall be imposed, or fine or imprisonment, as in cases of contempt. J. & A. Ann. Stat. ¶ 5553.

⁶⁶ *People v. Rushworth*, 294 Ill. 455, 128 N. E. 555. Laws 1871-1872, p. 413, § 36, as amended by Laws 1919, p. 710, permitting the imposition of a fine for the refusal to testify before a commissioner of a foreign court, is not void as depriving a person of due process of law, as the proceeding for the imposition of the fine is original in the circuit court, which has power to enforce its orders. *People ex rel. v. Rushworth*, 294 Ill. 455, 128 N. E. 555.

by mandamus to compel him, as an officer, to perform a ministerial duty. In a judicial sense there is no such thing as contempt of a subordinate administrative body. No question of contempt can arise until the issue of law is determined adversely to the defendant and he refuses to obey the final order of court. In matters of contempt a jury is not required by "due process of law." From the very nature of their institution, and that their lawful judgments may be respected and enforced, courts possess power to punish for contempt. The power is recognized and enforced by statute authorizing them to punish contempts of their authority when manifested by disobedience of their lawful writs, processes, order, rules, decrees or commands. A judgment of the court determining the issue will be a legitimate exertion of judicial power extended by the constitution.⁶⁷

A person can be regarded as in contempt for failure to obey an order of court only where the failure is intentional.⁶⁸ He cannot be adjudged in contempt and deprived of his property and imprisoned without notice and without an appearance; there is no jurisdiction, and an order assuming to fine, and for nonpayment imprison, under such circumstances is void.⁶⁹ The purpose of the law is to secure a fearless and impartial administration of justice and to guard against abuse of legal authority. Inferior courts acting in excess of jurisdiction are liable in damages to the party injured. The act is *corum non judice* and void; and the attempt to enforce sentence or conviction is a trespass. It is only when in the proper exercise of judicial functions that the power to sentence for contempt can be exercised.⁷⁰

§ 340. **Administration of Oath.**—Usually the deposition must show that the witness was sworn to tell the truth, or it may be objected to and quashed.⁷¹ If the certificate of an officer, taking depositions in chancery, states that the witnesses

⁶⁷ Interstate Commerce Commission v. Brimson, 154 U. S. 447, 38 L. Ed. 1047, 14 Sup. Ct. 1125.

⁶⁸ Dines v. People, 39 Ill. App. 565.

⁶⁹ Smith v. Tenney, 62 Ill. App. 571.

⁷⁰ Piper v. Pearson, 2 Gray (68 Mass.) 120, 61 Am. Dec. 438.

⁷¹ Lowrance v. Richardson, 23 Okla. 343, 100 Pac. 529; Griffin v. Humphrey, — Tex. Civ. App. —. 138 S. W. 1111.

were sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions are signed, it is sufficient, although the certificate does not state when the oath was taken, nor that the depositions were signed by the deponents.⁷² A deposition sworn to on information and belief may be sustained, if the answers are direct and positive.⁷³ But where the statutes require that the officer's certificate shall show "that the witness was first sworn to testify the truth, the whole truth, and nothing but the truth," it is insufficient to state that the witnesses were sworn "to testify the whole truth of their knowledge touching the matter in controversy."⁷⁴

§ 341. Interpreters.—In most of the states, if the witness requires it, interpreters may be sworn to translate the language, and the various questions and answers.

§ 342. Writing of Depositions; Stenographers; Reading to Witness; Signing by Witness.—In some states the statutes specifically provide that the deposition must be reduced to writing by the officer taking the testimony, by the witness testifying, or by some disinterested person in the presence of the officer, and such fact must be shown in the officer's certificate, or the deposition is fatally defective.⁷⁵ Some statutes expressly sanction the taking of depositions in shorthand,⁷⁶ and in taking testimony it has been held that typewriting is the same as any other writing,⁷⁷ but, in other states, the use of a stenographer is permitted only by agreement, such agreement being stated, and the stenographer being sworn.⁷⁸ The entire matter is governed by statute. Many statutes expressly require the testimony to be read to the witness and corrected by him. Defects in this regard are not considered substantial

⁷² *Ballance v. Underhill*, 4 Ill. (3 Scam.) 453.

⁷³ *Senter v. Teague*, — Tex. Civ. App., 164 S. W. 1045.

⁷⁴ *Western Union Tel. Co. v. Collins*, 45 Kan. 88, 25 Pac. 187, 10 L. R. A. 515.

⁷⁵ *Succession of Segura*, 134 La. 84, 63 So. 640; *American Bonding Co. v. Pulver*, 77 Neb. 211, 109 N. W. 156.

⁷⁶ *Code Civ. Proc.* § 2006; *Alcorn v. Gieseke*, 158 Cal. 396, 111 Pac. 98.

⁷⁷ *Edgefield Mfg. Co. v. Maryland Casualty Co.*, 78 S. C. 73, 58 S. E. 969.

⁷⁸ *Laurel Prtg. & Pub. Co. v. James*, 6 Boyce (29 Del.) 185, 97 Atl. 601.

by the courts, however, and the failure to certify that the reading took place has been held immaterial.⁷⁹ Such a statute requiring the witness to correct the testimony has been held not to apply to a deposition taken without the state, also, and where the notary certified that the testimony was read and corrected "by me," the deposition was held valid.⁸⁰

In some states signing of the deposition by the witness is requisite,⁸¹ and elsewhere such signing, while desirable, has been held not essential, there being no express statutory requirement to that effect and the deposition being otherwise regular and satisfactorily identified.⁸² An objection to a deposition in that the witness did not sign each page of the testimony as required by statute has been held not of a character to nullify the deposition.⁸³

§ 343. Certificate; Caption and Form; Signature of Officer; Seal.—The want of a caption will not invalidate a deposition, if the notice and notary's certificate supplies the information usually contained in the caption.⁸⁴ Frequently no fixed form for the caption and certificate is specified by statute. If taken and certified in substantial conformity with the statutory requirements, depositions will not be suppressed for mere technical objections.⁸⁵ Where the certificate of official character does not accompany a deposition, it may be produced at the time of hearing and the official character then established.⁸⁶

Where a statute requires depositions to be certified by the officer taking, a sealed but unsigned certificate does not comply with the statute.⁸⁷ But where a certificate shows the ad-

⁷⁹ *Rock Island Plow Co. v. Schoening*, 104 Minn. 163, 116 N. W. 356.

⁸⁰ *In re Colbert's Estate*, 51 Mont. 455, 153 Pac. 1022.

⁸¹ *Davis v. Otto* (Mo. App.), 206 S. W. 409.

⁸² *Boggs v. Cullowhee Min. Co.*, 162 N. C. 393, 78 S. E. 274.

⁸³ *Rock Island Plow Co. v. Schoening*, 104 Minn. 163, 116 N. W. 356.

⁸⁴ *Krohn, Fehheimer & Co. v. Sohn*, 68 W. Va. 687, 70 S. E. 699.

⁸⁵ *Behrensmeyer v. Kreitz*, 135 Ill. 591, 26 N. E. 704.

Where the precise form of the certificate is not prescribed by statute, substantial compliance with the statute as to the mode of taking and certifying must be shown. *Short v. Frink*, 151 Cal. 83, 90 Pac. 200.

⁸⁶ *Bishop v. Hilliard*, 227 Ill. 382, 81 N. E. 403.

⁸⁷ *Beckman v. Waters*, 161 Cal. 581, 119 Pac. 922.

ministration of the oath to a witness by a commissioner appointed by the court, and is signed by such commissioner as such officer and as a notary, the certificate is not objectionable, as the signature as notary may be ignored.⁸⁸ The omission of the seal of the officer to a deposition is not fatal where a statute exists authorizing acts without a seal.⁸⁹

§ 344. Clerical Errors.—Defects and irregularities in taking and in the examination of witnesses will be disregarded if they are merely formal and do not affect the rights of the parties.⁹⁰ The failure to show an adjournment in the certificate is a mere irregularity,⁹¹ and where a certificate states that the “adverse party was notified and did attend,” when the statement should read “did not attend,” the fact being otherwise shown, the error will be held a mere clerical error not invalidating the deposition.⁹²

Where a commissioner, in describing the commission, misdescribes the name of the clerk who issued it, it in no way detracts from such authority.⁹³ When the caption of the deposition properly gives the names of the parties a subsequent error in the name is not a fatal error.⁹⁴ Care should be exercised by notaries, however, to avoid such errors.

§ 345. Correction of Errors.—It has been held proper for a referee to return depositions to a notary in another state, so that they might be properly authenticated, there being no motion to suppress before the trial.⁹⁵ A deposition may be returned to the commissioner for proper signature.⁹⁶

§ 346. Return of Depositions; Lost Depositions.—The stat-

⁸⁸ *Alcorn v. Gieseke*, 158 Cal. 396, 111 Pac. 98.

⁸⁹ *Carpenter v. Gibson*, 82 Vt. 336, 73 Atl. 1030.

⁹⁰ *Hewlett v. Wood*, 67 N. Y. 394; *Rust v. Eckler*, 41 N. Y. 488; *Forrest v. Kissam*, 7 Hill (N. Y.) 463; *Semmens v. Walters*, 55 Wis. 675, 13 N. W. 889.

⁹¹ *Hodges Fiber Carpet Co. v. Hugro Mfg. Co.*, 203 Ill. App. 404.

⁹² *Fitzimons v. Richardson*,

Twigg & Co., 86 Vt. 229, 84 Atl. 811.

⁸⁹ *Kendall v. Limberg*, 69 Ill. 355.

⁹⁴ *Id.*

⁹⁵ *Bird v. Fox* (Mo. App.), 193 S. W. 941.

⁹⁶ *Creamer v. Jackson*, 4 Abb. Pr. (N. Y.) 413; *Keeler v. Vanderpool*, 1 Code Rep. N. S. (N. Y.) 289; *Semmens v. Walters*, 55 Wis. 675, 13 N. W. 889; 2 *Wait's Pr.* 707.

utes usually state how the deposition must be inclosed and to whom it must be delivered.⁹⁷ Such provisions must be complied with. The directing of a deposition to a master commissioner, instead of the clerk of court, as required by the statute, has been held to warrant the sustaining of an objection to the deposition.⁹⁸ But in another case, where the envelope containing the deposition was properly sealed, the title of the case indorsed thereon, the postage prepaid, and the envelope was mailed to the magistrate, the statute was held fully complied with. The seal of the notary across the flap of the envelope was not necessary.⁹⁹

The word "transmit" in a statute does not mean personal carrying by the officer, nor necessarily sending by mail, but requires the officer to adopt such means as will insure safe transfer of the document without tampering.¹ The fact that the deposition is carried by an interested attorney is not ground for suppression where the seal is unbroken and there is no evidence of tampering.²

A stipulation for the waiver of signatures of witnesses, and for the taking of testimony by shorthand, to be subsequently transcribed, does not operate as a waiver of anything relating to transmission of the deposition, and will not permit delivery to an attorney instead of the clerk of court.³ Depositions delivered by the commissioner, who took them to the attorneys, and by them kept until trial and presented in court unsealed, cannot be admitted in evidence.⁴ A deposition opened by the clerk of the court, in pursuance of an order of the court, and marked "filed," has no reason to be suppressed.⁵ Where a deposition is regularly taken and transmitted and filed and is lost, the court may permit the supplying of the contents of

⁹⁷ Post, § 350 *et seq.*, Statutory Requirements.

⁹⁸ Sealy v. Williston (Ky.), 117 S. W. 959.

⁹⁹ Jenkins v. Atlantic Coast Line R. Co., 83 S. C. 473, 65 S. E. 636.

¹ O'Leary v. Schoenfeld, 30 N. D. 374, 152 N. W. 679.

² O'Leary v. Schoenfeld, 30 N. D. 374, 152 N. W. 679.

³ Missouri & N. A. R. Co. v. Johnson, 115 Ark. 448, 171 S. W. 478.

⁴ Louisville, N. A. & C. Ry. Co. v. L. Heilprin & Co., 95 Ill. App. 402.

⁵ Sullivan v. Eddy, 164 Ill. 391, 45 N. E. 837.

the lost record, by permitting the reading of the stenographer's notes.⁶ The court in its discretion may allow to be read copies instead of original papers annexed by the deponent to his deposition.⁷

§ 347. Fees of Officers.—Usually the fees of notaries taking depositions are fixed by statute, but there is no statute in Illinois regulating the fees of commissioners employed to take depositions in suits pending in other states.⁸ The same fees will be allowed state officers taking depositions for federal courts as are allowed United States commissioners and clerks.⁹ The notary is entitled to such fees as are fixed by statute for the words transcribed, as where he writes the testimony or employs a stenographer, but he cannot charge where his employer hires a stenographer.¹⁰ Where in transcribing shorthand notes the notary copies a record or other paper, he is entitled to the fees fixed by statute, which are the same as those received by circuit clerks.¹¹

§ 348. Objections to Taking of Depositions.—Objections to a deposition because of irregularity or want of authority in taking must usually be by motion to suppress the deposition¹² before the time of trial.¹³ Objections to the materiality, competency or relevancy of the testimony taken by deposition are usually made at the time of trial.¹⁴ Objections to the form, or incompetency of witnesses, must be made before final hearing.¹⁵ The evidence of an interested witness must be objected to either when the deposition was taken, if the other party

⁶ *Crandall v. Greeves*, 181 Mo. App. 235, 168 S. W. 264.

⁷ *L'Herbette v. Pittsfield Nat. Bank*, 162 Mass. 137, 38 N. E. 368, 44 Am. St. Rep. 354.

⁸ *Fairchild v. Michigan Cent. R. Co.*, 8 Ill. App. 591.

⁹ *Jerman v. Stewart, Gwynne & Co.*, 12 Fed. 271.

¹⁰ Ante, § 36, Compensation and Fees of Notaries.

¹¹ *Reuscher v. Attorney General*, 30 Ky. L. Rep. 109, 97 S. W. 397.

¹² *King v. Green*, 7 Cal. App.

473, 94 Pac. 777; *Pearce v. Tharp*, 118 Miss. 107, 79 So. 69.

¹³ *Scott v. Wilson*, — Iowa —, 179 N. W. 941; *Allen v. Allen*, — Nev. —, 196 Pac. 843.

¹⁴ *Scott v. Wilson*, — Iowa —, 179 N. W. 941; *Allen v. Allen*, — Nev. —, 196 Pac. 843.

General objections at the trial are confined to substance. *Thomas v. Dunaway*, 30 Ill. 373.

¹⁵ *Moshier v. Knox College*, 32 Ill. 155.

was present, or on motion before trial.¹⁶ If no objection is made to the form of a question before the notary taking the deposition, it cannot be excluded at the time of trial because the question was leading.¹⁷ Objections to interrogatories should be made before trial.¹⁸ A misdescription in an interrogatory of a promissory note, as bearing twelve per cent interest instead of ten, is not such variance as will exclude the answer.¹⁹ If there is no appearance on the other side and no cross-interrogatories, it is doubtful whether the opposite party can complain that the last general interrogatory was not answered. The rule is that it should be answered, as unless it is answered it is impossible to say that the witness has told the whole truth; but where it is apparent that the witness could not testify further except to contradict his answers to the specific interrogatories, the omission is harmless.²⁰ Opponent's deposition cannot be suppressed for want of full answers of witnesses to opponent's questions. The objections should come from the party injured.²¹

A defect on the face of the notice should be presented by motion to suppress before the trial.²² An objection that the name of the witness was not in the notice must be taken before trial.²³ Objection for lack of a stamp must be taken, by a motion to suppress, before trial.²⁴ Slight but misleading inaccuracy in name ascribed to the defendant corporation in the deposition is not grounds for excluding the deposition.²⁵

§ 349. Waiver of Objections.—An objection to the mere form of a question is waived unless made before the notary at

¹⁶ Lockwood v. Mills, 39 Ill. 602.

¹⁷ Welborn v. Faulconer, 237 Mo. 297, 141 S. W. 31.

¹⁸ Jacksonville, T. & K. W. R. Co. v. Peninsular Land, Transp. & Mfg. Co., 27 Fla. 1, 157, 9 So. 661, 17 L. R. A. 33, 65; Cincinnati, I., St. L. & C. Ry. Co. v. Howard, 124 Ind. 280, 24 N. E. 892, 8 L. R. A. 593, 19 Am. St. Rep. 96; Missouri Pac. R. Co. v. Ivy, 71 Tex. 409, 9 S. W. 346, 1 L. R. A. 500, 10 Am. St. Rep. 758.

¹⁹ Stowell v. Moore, 89 Ill. 563.

²⁰ Semmens v. Walters, 55 Wis. 675, 13 N. W. 889.

²¹ Cole v. Choteau, 18 Ill. 439,

²² Voorhees v. Cragun, 61 Ind. App. 690, 112 N. E. 826.

²³ Rockford, R. I. & St. L. R. Co. v. McKinley, 64 Ill. 338.

²⁴ Lockwood v. Mills, 39 Ill. 602.

²⁵ Merchants Despatch Trans. Co. v. Leysor, 89 Ill. 43.

the time the question is propounded.²⁶ The taking part in the taking of a deposition and the cross-examination of a witness is a waiver of irregularities in the taking of the deposition.²⁷ After a deposition has been read without objection upon one trial it cannot afterwards be objected to on account of any defect existing at the time it was used.²⁸

²⁶ Redmond v. Quincy, O. & K. C. R. Co., 225 Mo. 721, 126 S. W. 159.

²⁷ Allison v. Chicago, St. P., M. & O. R. Co., 37 S. D. 334, 158 N. W. 452, 15 N. C. C. A. 183.

Where the party appears before the officer taking the depositions and cross-examines the witnesses,

when it was stipulated that the witnesses should be examined before that officer, all formalities touching the dedimus are waived. Rockford Wholesale Grocery Co. v. Stevenson, 65 Ill. App. 609.

²⁸ Brackett v. Nikirk, 20 Ill. App. 525.

STATUTORY REQUIREMENTS.

§ 350. **Alabama**—DEPOSITIONS—taken by commissioner. Written interrogatories to be filed with the clerk of the court. NOTICE—of ten days to be given adverse party. Commissioner subpoenas witnesses. Penalty for failure to appear, \$100. Commissioner to reduce the answers of witness to writing, having sworn him to speak the truth, the whole truth and nothing but the truth. Commissioner's certificate of the manner, place and personal knowledge of the witness's identity, that the witness has no interest in the result, is presumptive evidence of the fact stated by him. The deposition to be sent to the clerk of the court, and may be read in evidence unless previously objected to. The testimony of a nonresident witness may be taken conditionally and perpetuated, to be received in evidence.

§ 351. **Alaska**—DEPOSITIONS—may be taken of a witness in an action out of the district any time after service of the summons of defendant, and in a special proceeding any time after a question of fact arises; may be taken in the district under the same circumstances when the witness is a party to the action, by the adverse party; when the witness resides more than one hundred miles distant, or is about to go more than that away; when infirm; when the testimony is required upon motion, or where the oral examination is not required; may be taken outside the district upon commission issued from the court or without commission before a commissioner appointed by the governor of the district to take depositions in any state or country. Commissions may issue from a clerk of the court, or by a justice of the peace in a cause in his own court, on the application of either party upon five days' previous notice to the other. Unless parties otherwise agree, commission

to be issued to a judge, justice of the peace, notary or clerk of a court. Interrogatories may be issued with the commission as parties or court may agree. Oath of witness to be taken and the deposition to be certified to the court in a sealed envelope, directed to the court clerk or justice who issued the commission, delivered by mail or usual conveyance. In the district the deposition may be taken before the clerk of a court of record or anyone authorized to administer oaths. Three days' notice of time and place to be given adverse party, one day additional for every twenty-five miles, unless the court otherwise decides. Either party may attend and examine the witness. Deposition to be written by the officer taking or by the witness, or by a disinterested person, in the presence and under the direction of the officer. When completed it shall be read to the witness, subscribed to by him, and corrected by him if necessary—corrections and additional statements to be part of the deposition. Officer to append his certificate under his official seal, stating hour, place and date of taking; that witness was duly sworn to tell the truth, the whole truth and nothing but the truth; that it was read to witness and by him subscribed to. Same to be directed and delivered as before mentioned.

§ 352. **Arizona**—DEPOSITIONS—may be taken where the witness is aged, infirm, sick, on official duty, or unable to attend court, residing out of the state or county or fifty miles from trial, has or is about to leave the state or county, or when party desires to perpetuate testimony. Either party may apply for a commission to take by giving five days' notice to opposite party, with interrogations attached to notice, and name of witness with residence and place of taking. **WHO CAN TAKE**—IN THE STATE—the commission is to be addressed to any clerk of the superior court, or notary of the county. **WITHOUT THE STATE**—in the United States—to any clerk of a court of record having a seal, any notary, or commissioner of deeds for this state. **WITHOUT THE UNITED STATES**—to any notary, minister, commissioner, or charge d'affaires, or any consul general, consul, vice consul, commercial agent, vice commercial agent, deputy consul or consular agent of the United States resident in the country. **MANNER OF TAKING**—either party may attend the examination and interrogate, but cannot in such cases object to questions at the trial unless they did so at the examination, if oral, or unless objections are filed within five days to the written interrogatories. The officer taking the deposition shall summon witness, and fine and imprison for failure to appear and testify. The answers to questions shall be written, sworn and subscribed to by witness, certified by the officer, sealed up with other papers. The officer must write his name across the seal, indorse names of parties to the suit and the witnesses, direct same to the clerk of the court or justice where the commission issued or, if no commission, where case is pending. May be returned by mail or personally.

§ 353. **Arkansas**—DEPOSITIONS—IN THE STATE—taken before any judge or clerk of a court of record, justice of the peace, mayor,

notary. **OUT OF THE STATE**—before a commissioner appointed by the governor of this state, judge of court, justice of the peace, mayor, notary, or any person empowered by a commission directed to him by the consent of the parties or by order of court. The clerk of any court of record in the county must certify under his seal that such officer was an acting judge or justice of the peace, duly commissioned at the time. Depositions taken out of the state, sealed and directed as here provided, may be delivered to the party taking the same, his agent or attorney. **NOTICE**—reasonable notice to be given adverse party. **POWER AND DUTY OF OFFICER**—to subpoena the witnesses, may issue warrant of arrest for contempt, if witness fails to appear. Officer to decide all objections to questions, noting such as are in doubt. Power to prevent insulting or too lengthy questions. Statement of witness must be written in the presence of the officer taking it. Certificate of officer to state the time and place of taking; that the witness was sworn before he gave his testimony, that the testimony was written, read to and subscribed by him in the officer's presence. Must state by whom testimony was written, which of the parties, in person or by agent or attorney, was present. When the deposition is completed, it is to be sealed by the officer and directed to the clerk of the court where suit is pending.

§ 354. **California**—**WHO MAY TAKE—IN THE STATE**—a judge or any officer authorized to administer oaths, upon serving five days' notice, and one day for every twenty-five miles of travel of witness unless shorter time set by judge, when order must be sent, with notice, to the adverse party. **OUT OF THIS STATE**—by a commission issued from the court, under court seal. It may be directed to any person agreed upon by the parties, or, if they do not agree, to any judge, justice of the peace or commissioner selected by the court or judge issuing it. If commission is issued by a justice of the peace, it must have attached to it the certificate, under seal, of the superior court stating that the party issuing it is acting as a justice of the peace. Ten days' notice and one day for every 300 miles from court to place of taking. **OUTSIDE THE UNITED STATES**—a minister, ambassador, consul, vice consul or consular agent of the United States in such country, or any person agreed upon by the parties, can be taken by a commission appointed by the court under its seal. Discretion allowed as to deposition of party testifying. Parties may agree upon the interrogatories, and mode of taking. Oath to be administered to witness. Deposition to be certified to the court. It must be inclosed in a sealed envelope, directed to the clerk of the court and forwarded by mail or usual conveyance. The judge authorizing the commission may issue subpoena for other witnesses. Either party may attend examination and put questions, provided each party shall pay cost of his own examination. The officer taking may demand a deposit from each party sufficient to defray the expense of such. If a party refuses to deposit he waives his right to examine.

§ 355. **Colorado**—DEPOSITIONS—may be taken when witness is party or beneficiary, resides out of or is about to leave county, is infirm or unable to attend trial, or for other cause. **WHO MAY TAKE—IN THE STATE**—all courts, judges, justice and clerk thereof, justices of the peace, notaries, within their district and under their official seals and commissioners. Out of the state, commissioner of deeds, notary, justice of the peace or person agreed on by parties. **FORM**—none specially, follow form of the state ordering the dedimus. **NOTICE**—depends on residence. Upon five days' notice to the adverse party depositions may be taken out of the state by commission issued by the clerk of the court on written interrogatories, same to be attached to the commission issued to a person agreed upon by the parties or by the judge; if they cannot agree, to any judge, justice of the peace, notary or to a commissioner of deeds. The adverse party may file and have attached to the commission cross-interrogatories by giving three days' notice or may apply for oral examination. If either party giving notice fails to attend, the attending party shall be entitled to \$5 per day for each day's attendance and to 6c per mile for each mile traveled, same to be taxed by the court where suit is pending, and for which attachment may issue. Adverse party may submit written interrogatories instead of attending. Complete deposition must be carefully read to witness, subscribed, certified, sealed and directed to clerk of court where action is pending or to person agreed upon.

§ 356. **Connecticut**—IN THE STATE—may be taken by a judge or clerk of any court, justice of the peace, notary, commissioner of the superior court. **OUT OF THE STATE**—by a notary, commissioner appointed by the governor, or any magistrate having power to administer oaths. **OUT OF THE UNITED STATES**—by any foreign minister, secretary of the legation, consul or vice consul of the United States resident in that country. His official character can be proved by the secretary of the United States. Court may issue commission to any person in the military or naval service of the United States who may administer oaths, etc., to persons in the service. Judges of the superior court, court of common pleas or district court of Waterbury, when not in session, may issue a commission to take depositions of persons out of this state, notice being given to adverse party. Commissioners appointed by the laws of any other state or government to take testimony in this state, may apply to the judge of any court of record, justice of the peace, notary or commissioner of the superior court, for a subpoena or *capias* to compel the appearance of any witness. Upon the refusal of the witness to comply, the officer issuing may commit them to prison. Subpoenas may be issued by any judge or clerk of any court, justice of the peace, notary or commissioner of the superior court, upon request, for the appearance of any witness before him, to give his deposition in a civil action, when such party is going to sea or out of the state, is sixty years of age or lives more than twenty miles from the place of trial, and may take his deposition on refusal to appear, the magistrate may issue a *capias*. If the witness refuses to depose, the magistrate may

commit him to prison until he complies. Returned to court unsealed or with seal broken, shall be rejected by the court. If the adverse party appears on notice and the party giving such notice fails to appear at the time and place stated, then costs shall be allowed to the adverse party. The returned deposition remains in the custody of the clerk of the court. Reasonable notice must be given to the adverse party, his agent or attorney, or left at his place of abode. WITNESSES—cautioned to speak the truth, carefully examine, subscribe to their deposition, make oath before the authority taking, the authority shall attest the same and certify that the adverse party or his agent was present (if so), or that he was notified, and shall also certify the reason of taking the deposition, seal it up, direct it to the court where it is to be used, and deliver it, if desired, to the party at whose request it was taken. PERPETUATING TESTIMONY—party desiring it may petition in writing any judge of the superior court, stating reasons, subject-matter, name of witness and persons interested. If no reason for the contrary, the judge shall arrange for such. Persons taking depositions may adjourn from time to time, giving notice to parties present. Depositions so taken must be sealed up and directed to the clerk of the county superior court where some of the petitioners reside; if nonresidents of the state, then where some of the respondents reside, and he shall open and file them.

§ 357. Delaware—If it appears by affidavit necessary, the justice may make a rule that the deposition be taken before a commissioner named by him, unless otherwise agreed; the party applying shall file in writing all the questions to be put to the witness, giving at least four days' notice to the adverse party, who may file other questions. The justice shall forward a copy of the rule and questions to the commissioner. Deposition to be written, signed by the witness, certified to by the commissioner and sealed up and sent to the justice. The witness must first be sworn by the commissioner, to answer the questions truly; neither party shall be present and no questions to be put but those sent by the justice.

§ 358. District of Columbia—DEPOSITIONS—may be taken when witness lives beyond this district; when witness is going out of the district or United States and will not return in time for trial; when aged or infirm or cannot attend the trial, may be taken before any court of the United States, commissioner or clerk of a court, chancellor, justice, judge of supreme or superior court, mayor or chief magistrate, judge of county court or court of common pleas, notary, justice of the peace within the United States, when not interested in the cause. Reasonable notice of time and place must be given opposite party, with names of witnesses and officer taking. Unlawful to require opposite party to attend more than one place on the same day, officer taking to summon by the marshal any witness. Officer has power to compel attendance. Witness to be first sworn to tell the truth, the whole truth and nothing but the truth. Adverse party has right to cross-

examine, the questions and answers to be taken down in writing, or typewritten if desired, read to and signed by witness in the presence of the officer. If refusal is made, officer to so certify, with the reasons. Documents to be sealed up by officer and indorsed with the title of the cause, costs of taking, by whom paid and by him mailed to the court where cause is pending. On motion, court may order a commission to take a deposition outside the district.

§ 359. **Florida**—The party desiring the deposition must prepare written interrogatories, deliver a copy to the adverse party or his attorney a reasonable time before applying for a commission, stating reasons for taking, date of application, name of commissioner, and file same with the court. If the adverse party has no attorney and does not reside in the state, notice to be given by advertisement in a newspaper printed in applicant's county once a week for four consecutive weeks. On proof of the advertisement to the clerk or the court a commission will issue. The adverse party may file cross-interrogatories and name of commissioner, serving a duplicate on the applicant. The applicant can serve notice of redirect interrogatories, with notice of time of application for a commission upon all the interrogatories. At the time mentioned the clerk or court shall issue commission, and names of the commissioners selected by each of the parties, attaching the interrogatories filed by each and delivering same to the applicant. The commissioner shall make oath before a notary or judicial officer where the testimony is taken, that he is neither kin, attorney nor agent of either party, nor interested in the result; that he will well and faithfully perform the duties of commissioner. Oath to be in writing, and returned with the commission. The commissioner shall swear each witness before taking the deposition. The parties or their attorneys may be present, and after the interrogatories may propound others germane to the subject, which shall be written down by the commissioner and become a part of the deposition. The commissioners shall inclose all the interrogatories, answers and commission, seal and write their names across the seals of the envelope, that the court may recognize it as applicable to some particular cause. The usual initials of office and Christian names of the commissioners and others shall be sufficient. It may be returned by mail or person. The person returning it or taking it from the post office, other than the clerk, must make oath that he received it from the commissioner (or the postmaster, etc.); that it has been in his possession ever since, and has not been opened or altered.

§ 360. **Georgia**—A witness may be examined on interrogatories, by commission, at the instance of either party, in any civil cause pending in this state when the witness resides out of the county; when age, condition of health or business prevents attending at court, or when about to remove from the county or leave home beyond the term of court, or where he is the only material witness. Female witnesses are not obliged to attend court. The party desiring it must prepare written

interrogatories, with witness' name and residence, and serve a copy, with notice of filing, on the adverse party or his attorney. At the expiration of ten days a commission shall issue. If the adverse party is beyond the jurisdiction of the court, or cannot be found, and has no attorney, a ten days' notice at the court house door will suffice. Notice must be served on each adverse party. The commission will issue a blank allowing the party to select his commissioners, but the adverse party shall be allowed to select two. The commissioner shall be disinterested, having no relationship or interest to the parties. His compensation not exceeding \$2.00 per day, as cost in the suit. Neither party nor representative to be present. On refusal of witness to appear or answer, an affidavit presented to a judge of the superior court, or the ordinary, shall cause an order to issue to arrest and bring him before such judge or ordinary; after hearing his excuses he shall order the witness lodged in jail until he answers. This provision extends to commissions sent from the courts of other states in the United States. No witness shall be required to go out of the county, nor more than ten miles from his residence; he shall have court witness fees. Witnesses may write their answers in the presence of the commissioners. It shall be certified by the commissioners and returned with the commission. The answers to be made under oath, signed by the witness and attested by the commissioners, and place of execution shown. All papers, etc., to be sealed in an envelope, with the names of the commissioners written across the seal and directed to the officer of the court. It can be sent by mail or express, by the party himself or by some private hand. The postmaster or express company receiving must certify to the fact. The postmaster or express agent delivering must certify to its reception by due course of mail or express, or the party delivering it by hand must make affidavit of the fact and of its freedom from alteration. The postmaster at the office to which it is directed shall immediately upon its receipt indorse upon it the fact of its reception by due course of mail, and at once deliver it to the clerk or presiding judge or justice. The clerk or judge receiving shall indorse thereon from whom received and the time; it shall be filed away unbroken and may be opened any time by written consent of counsel for both sides. A party failing to return or wilfully abstracting the commission shall be attached for contempt and otherwise dealt with until same is returned. The adverse party or his attorney may, in writing, waive the commission and the answers of the witness may be taken in virtue of such agreement. The person taking shall administer the usual oath to the witness under the penalties of perjury in this state. Exceptions must be in writing and notice given the opposite party before the case is submitted to the jury; provided, the same has been in the clerk's office for twenty-four hours. Depositions read on the first trial shall not be subject to formal exceptions in subsequent trials. In any court of record, either party may, without an order or commission, take the deposition of a witness, resident of the county or not, on giving adverse party five days' notice of

time, place, and names of witnesses. To be taken before any commissioner appointed by the judge of the county superior court. The commissioner to summon witnesses and compel attendance. HIS FEES—to wit: examining each witness, \$2.00; certifying and returning testimony for plaintiff or defendant in each case, 50c; issuing subpoena, 25c. PERPETUATION OF TESTIMONY—superior courts may entertain, where the facts cannot be made immediately the subject of investigation at law, and the common-law proceedings under the Code as available or as completely available as a proceeding in equity. Failure to appoint a commissioner by the judge of the superior court of any county, or a vacancy occurring in the office of commission, the clerk of said court shall act as such commissioner, all witnesses to be examined in the county of their residence, and before the commissioner or clerk acting as such. Commissioner has power, notice being given to the opposite party or his attorney, or a subpoena *duces tecum* being served, five days previous to the hearing, to require any witness or party to produce at the hearing books, writings and other documents in his possession, power, custody or control. A refusal to appear or answer without legal excuse shall be treated as contempt. Certification of same to the judge of the court where case is pending shall be punishable by the judge as committed before him.

§ 361. Hawaiian Islands—DEPOSITIONS—any court of record, or its judges, in suits pending before them can order a commission to issue for the examination of witnesses residing in a foreign country or other circuit, upon oath, by interrogatories or otherwise, with full instructions as to taking. When it shall appear to the satisfaction of the court that the witness is beyond the jurisdiction of the court, a resident of another circuit, or unable to be present at the trial. Notice to be given the adverse party, his agent or attorney, allowing twenty-four hours after notice and one day exclusive of Sundays for every twenty-five miles of travel, if he lives more than twenty-five miles from the place of taking the deposition. WHO CAN TAKE—a district magistrate, circuit judge or clerk, notary. ABROAD—ministers, commissioners, consuls, vice consuls. The witness to be sworn or affirmed to testify to the truth, the whole truth and nothing but the truth. The examination to be oral or by written interrogatories; same to be written by the officer or someone by him appointed, to be taken in his presence, to be read by, or to, and signed by the deponent. The officer then to annex his certificate, stating the time, place and manner of the taking, the cause for which it was taken, who were present, whether adverse party attended, stating notice, if any given. The deposition then to be inclosed in an envelope, sealed up, directed to the court or arbitrators before whom the cause is in trial, and delivered; and shall remain sealed until opened by direction of the court, arbitrators' or referees' objections to be made at the taking and noted on the deposition if upon written interrogatories. Witness may be summoned and compelled to attend the examination.

§ 362. **Idaho**—BEFORE WHOM TAKEN—any judge, justice of the peace, notary, mayor or recorder of a city, clerk of a court of record or commissioner appointed by the court, must be a disinterested party. **WITHIN THE UNITED STATES**—no commission is necessary. **OUTSIDE THE UNITED STATES**—the clerk shall, upon request of the party, issue a commission to the officer or commissioner designated. No order of court or affidavit necessary. If the commission contains the name of the officer, his attestation, officially certifying the same is sufficient. If his name is not specified and he has no official seal, then his certificate shall be authenticated by the certificate and official seal of the clerk or prothonotary of any court of record of his county. Notice must be given the adverse party, his agent or attorney, stating the cause, court, time, place, and names of witnesses, allowing one day for each twenty miles party may have to travel, not exceeding thirty days. If the party nor his attorney reside in the state, notice may be filed in the clerk's office and published three weeks successively in the county where suit is pending and a copy mailed to the party or his attorney, allowing ten days. May be taken by either party in vacation or term time, after service of summons, without order of court. The court may fix the time. A witness is not obliged to attend outside his county. Officer can summon and compel attendance by reporting to any probate or district court of the county, and on refusal then to comply the court will deal as for contempt. The deponent shall be sworn by the officer to testify to the truth, the whole truth and nothing but the truth. The party producing him to first examine, then the adverse party, and then the officer or parties afterwards if they see cause. The deposition to be written down by the officer, or the deponent, or some disinterested person, in the presence and under the direction of the officer. After being read to or by the deponent, he shall subscribe to it. The officer shall annex his certificate and state that the deponent was sworn according to law; by whom the deposition was written; that it was written in the presence and under the direction of the officer; whether the adverse party was present; time and place of taking and the hours between. The officer shall sign and attest the certificate, seal with his official seal, if he have one. The officer shall seal it up and direct it to the clerk of the court, indorsing on the envelope the names of the parties and the witnesses deposed. Must be filed in court one day before trial. Objections must be made before trial. It may be used in a second trial or in any other action between the parties for the same cause, if it has remained during the time on file in the court. **DEPOSITIONS TAKEN FOR PERPETUATING TESTIMONY**—may, at any time, be published by order of the court in the office of the clerk where filed and entered upon record, on the motion of anyone interested, at the cost of the party.

§ 363. **Illinois**—WHO MAY TAKE—the testimony of any witness residing or being within the state necessary in any suit in chancery in this state, may be taken before any judge, justice of the peace, clerk of a court, master in chancery or notary public, without a com-

mission or filing interrogations for such purpose, on giving the adverse party or his attorney ten days' notice of the time and place of taking, and one day in addition (Sundays inclusive) for every fifty miles' travel from the place of holding the court to where such deposition is to be taken. If the party entitled to notice and his attorney reside in the county where the deposition is to be taken, five days' notice sufficient. RESIDENT WITNESS—upon satisfactory affidavit being filed, depositions of witnesses residing in this state, to be read in suits at law, may be taken in like manner and upon like notice; where the witness resides in a different county from that in which the court is held, is about to depart from the state, is in custody on legal process, or is unable to attend such court on account of advanced age, sickness or other bodily infirmity. NONRESIDENT WITNESS—any witness residing within this state more than one hundred miles from the place of holding the court, or not residing in this state, or who is engaged in the military or naval service of this state or the United States, and is out of this state, necessary in any civil cause pending in any court of law or equity in this state, ten days' notice to be given the adverse party, or his attorney, together with a copy of the interrogatories to be put to such witness, and to sue out from the proper clerk's office a *dedimus potestatem* or commission, under the seal of the court. When the deposition of any witness is desired to be taken and the adverse party is not a resident of the county in which the suit is pending, or is in default, and no attorney has appeared for him in such cause, upon filing an affidavit of such fact and stating the place of residence of such adverse party, if known, or that, upon diligent inquiry, his place of residence cannot be ascertained, notice may be given by sending a copy thereof by mail, postage paid, addressed to such party at his place of residence, if known, or, if not known, by posting a copy of such notice at the door of the court house where the suit is pending, or publishing the same in the nearest newspaper, and when interrogatories are required, filing a copy thereof with the clerk of the court ten days before the time of suing out such commission. ORAL EXAMINATION—when a party shall desire to take the evidence of a nonresident witness, to be used in any cause pending in this state, the party desiring the same, or where notice shall have been given that a commission to take the testimony of a nonresident witness will be applied for, the opposite party, upon giving the other three days' notice in writing of his election so to do, may have a commission directed to take such evidence, upon interrogatories to be propounded to the witness orally; upon the taking of which, each party may appear before the commission, in person or by attorney, and interrogate the witness. The party desiring such testimony shall give to the other the following notice of the time and place of taking the same, to wit, ten days, and one day in addition thereto (Sundays included) for every one hundred miles' travel from the place of holding the court to the place where such deposition is to be taken. ORAL EXAMINATION, COSTS—when a party to a suit shall give the op-

posite party notice to take a deposition upon oral interrogatories, and shall fail to take the same accordingly, unless such failure be on account of the nonattendance of the witness, not occasioned by the fault of the party giving the notice, or some other unavoidable cause, the party notified, if he shall attend himself or by attorney, agreeably to the notice, shall be entitled to \$2.00 per day for each day he may attend under such notice, and to 6c per mile for every mile that he shall necessarily travel in going to and returning from the place designated to take the deposition, to be allowed by the court where the suit is pending, and for which execution may issue. HOW TAKEN AND CERTIFIED—previous to the examination of any witness he or she shall be sworn (or affirmed) by the person or persons authorized to take the same, to testify the truth in relation to the matter in controversy, so far as he or she may be interrogated; whereupon the officer authorized to take depositions shall proceed to examine such witness upon all such interrogatories as may be inclosed with or attached to any such commission as aforesaid and which are directed to be put to such witness, or where the testimony is taken upon oral interrogatories, upon all such interrogatories as may be directed to be put by either party litigant; and shall cause such interrogatories, together with the answers of the witness thereto, to be reduced to writing in the order in which they shall be proposed and answered, and signed by such witness; after which, it shall be the duty of the person taking the deposition to annex at the foot thereof a certificate, subscribed by himself, stating that it was sworn to and signed by the deponent, the time and place, when and where taken. Every such deposition, taken and subscribed, and all exhibits produced, or which shall be proved or referred to by any witness, together with the commission and interrogatories, if any, shall be inclosed, sealed up, and directed to the clerk of the court in which the action shall be pending, with the names of the parties litigant indorsed thereon; provided, that when any deposition shall be taken as aforesaid, by any judge, master in chancery, notary public, or justice of the peace out of this state, or other officer, such return shall be accompanied by a certificate of his official character, under the great seal of the state, or under the seal of the proper court of record of the county or city wherein such deposition shall be taken. Every deposition that shall be returned to the court unsealed, or the seal of which shall be broken previous to its reception by the clerk to whom it is directed, shall, if objection be made thereto in proper time, be regarded by the court as informal and insufficient. It shall not be lawful for any party litigant or the clerk of the court into which any deposition may be returned, as aforesaid, to break the seal of the same, either in term time or in vacation, unless by written consent of the parties thereto or their attorneys, or by the order of the court, duly entered of record. And if any such person or clerk shall presume to open any such deposition when taken, and returned as aforesaid, without such consent or order of the court, he shall be considered guilty of a contempt of court, and may be punished accordingly; provided, that it shall not be consid-

ered an offense for the clerk to break open any such deposition, when it is doubtful from the indorsements made thereon whether the same be a deposition or not; but in such case, it shall not be proper for such clerk to permit any person to examine any deposition which may be thus opened by mistake, until the consent of the parties or their attorneys is first had and obtained therefor, or until the court shall have entered the order therefor. **WRITING**—the party, his attorney, or any person who shall in any wise be interested in the event of the suit, shall not be permitted to dictate, write or draw up any deposition which may at any time be taken under this act, or be present during the taking of any deposition by written interrogatories; and every deposition so dictated, written or drawn up, or during the taking of which any such party, his attorney, or any person so interested is present when the same is taken upon written interrogatories as aforesaid, shall be rejected by the court as informal and insufficient. **EVIDENCE**—every examination and deposition which shall be taken, and returned according to the provisions of this act, may be read as good and competent evidence in the cause in which it shall be taken, as if such witness had been present and examined by parol in open court, on the hearing or trial thereof. **FURTHER EXAMINATION**—if it shall appear to the satisfaction of the court that any witness has not given full or proper answers to the interrogatories or cross-interrogatories accompanying the commission to take his testimony, or that a further examination ought to be allowed to either party for the ends of justice, may allow another commission to issue to the same or other commissioner, to further examine the witness in such manner and upon such conditions and notice as the court shall direct. **ATTENDANCE OF WITNESSES**—every officer required to take depositions in this state, or by virtue of any commission issued out of any court of record in any other state, territory or country, shall have power and authority to issue subpœnas, if necessary, to compel the attendance of all witnesses, in the same manner as witnesses are subpœnaed in other cases, and any witness neglecting or refusing to obey such subpœna, or refusing to testify, or to subscribe his deposition when correctly taken, the officer issuing such subpœna shall at once report in writing the facts accompanying the same with a copy of the commission or other authority received by him, together with a copy of the subpœna and the return of service thereof, and file the same in the office of the clerk of the circuit court of such county, and thereupon attachment shall issue out of said court against such witness, returnable forthwith, before the circuit court of such county if in term time, or before any judge of said court if in vacation, who shall hear and determine the matter in a summary way; and it appearing to the court to be wilful, and without lawful excuse, the court shall punish such witness by fine, and imprisonment in the county jail as the nature of the case may require in cases of contempt of court. **FEES OF WITNESSES**—every person attending to be examined shall be entitled to compensation at the same rate as is allowed to witnesses attending courts of record in this state; and the party requiring such

examination shall pay the expense thereof, but may, if successful in the suit, be allowed for the same in the taxation of costs. On the trial of every suit in chancery, oral testimony shall be taken when desired by either party. **TESTIMONY PERPETUATED**—where any person shall desire to perpetuate the remembrance of any fact, matter or thing, necessary to the security of any estate, real, personal or mixed, or any private right, such person, upon filing a petition supported by affidavit in the circuit court of the proper county, setting forth, briefly and substantially, his interest, claim or title concerning which he desires to perpetuate evidence, the names of all other persons interested or supposed to be interested therein, and whether there are any persons interested therein whose names are unknown to the petitioner, and the name of the witness proposed to be examined, may sue out from such court a *dedimus potestatem* or commission, authorizing the deposition of such witness. Such petition shall be docketed by the clerk as other cases in equity, the petitioner being designated as plaintiff, and the persons stated to be interested, as aforesaid, as defendants—the parties whose names are unknown being designated as “unknown owners.” **SEVERAL COMMISSIONS MAY ISSUE**—several commissions may be issued, upon the same petition, to different commissioners or officers, either within or without this state, to take the testimony of different witnesses, or witnesses residing in different places, or the same commissioners or officers may proceed from place to place to take the same. **NOTICE**—before taking the testimony of a witness, the person suing out such commission shall give to each and every person known to be interested in the subject-matter of such testimony, or his attorney, or, if a minor, his guardian, or, if he has no guardian, or if his guardian is interested, to such guardian *ad litem* as shall be appointed by the court, or to his or her conservator, if he or she has one, two weeks’ notice, in writing, of the time and place when and where the testimony will be taken, which notice shall state when and where the petition was filed, the names of the parties and witnesses mentioned in the petition, and a short statement of the subject-matter concerning which the testimony is to be taken. **NOTICE TO NONRESIDENTS, ETC.**—notice to nonresident parties, or such as cannot be found so as to be personally served, and to unknown owners, may be given in the same manner as is provided for notifying nonresident parties in suing out a commission to take testimony in a case pending. **COURT NOTICE**—when in the opinion of the court no sufficient provision is made by law for giving notice to parties adversely interested, the court may order such reasonable notice to be given as it shall deem proper. **TAKING, CERTIFYING TESTIMONY**—every person who may think himself interested in the subject of a deposition about to be taken, may attend, by himself or his attorney, at the time and place of taking such testimony, and may examine and cross-examine such deponent, and all such questions as may be proposed, together with the answers thereto by the witness, shall be reduced to writing in the English language, as near as possible in the exact words of such deponent, which said questions and answers,

when reduced to writing, shall be distinctly read over to the witness, and, if found to be correct, shall be signed by him in the presence of the officer before whom the same is taken, who shall thereupon administer an oath or affirmation to such witness, as to the truth of the deposition so taken, and shall annex at the foot thereof a certificate, subscribed by such officer, stating that it was sworn to and signed by the deponent, and the time and place when and where the same was taken; and all such depositions shall be carefully sealed up and transmitted to the clerk of the circuit court of the county from which such dedimus shall have been issued, within thirty days from the time of taking; who shall thereupon enter the same at large upon the records in his office, and shall certify on the back of such deposition that the same has been duly recorded, and return it to the person for whose benefit it shall have been taken. A deposition taken under the provisions of the seven preceding sections, or a certified copy of the record thereof, may be used as evidence in any case to which the same may relate, in the same manner and subject to the same conditions and objections as if it had been originally taken in the suit or proceeding in which it is sought to be used; and parties notified as "unknown owners," in the manner hereinbefore provided, shall be bound to the same extent as other parties.

ELECTION CONTEST—whenever a notice shall have been given of intention to contest an election, either party may proceed to take testimony of any witness, on giving to the adverse party or his attorney ten days' notice of the time and place of taking the same, and one day in addition thereto (Sunday inclusive) for every fifty miles' travel from the place of residence of such party to the place where such deposition is to be taken. If the party entitled to notice resides in the county where the deposition is to be taken, five days' notice shall be sufficient. A copy of the notice to take depositions, with proof of the service thereof, with the deposition, shall be sealed up and transmitted by mail or otherwise to the secretary of state, with an indorsement thereon showing the names of the contesting parties, the office contested, and the nature of the papers. The officer before whom depositions are taken shall have power to compel the production of papers, and the attendance of witnesses; and the same proceedings may be had to compel the attendance of witnesses as are provided in the cases of taking depositions to be used in courts of law and equity. Depositions in actions before justices of the peace to be taken upon like notice and in like manner.

§ 364. **Indiana**—Commission to take only necessary when outside the United States. No order of court necessary; the clerk can issue it. When the commission contains the name of the officer, his attestation is sufficient, but if not containing the name and the party has no official seal, then the certificate must be authenticated by the certificate and official seal of the clerk or prothonotary of any court of record where the officer exercises his duties. Must be filed with the court at least one day before trial. Taken anywhere, before any judge, justice

of the peace, notary, mayor or city recorder, clerk of a court of record or commissioner appointed by the court. Must be disinterested person. Reasonable notice to be given the adverse party of the cause, court, time, place and names of the witnesses. Officer can compel the attendance of witnesses by reporting fact to the superior or circuit court of the county. Deponent to be first sworn to testify the truth, the whole truth and nothing but the truth. He shall then be examined by the party producing him, then by the adverse party and by the officer or parties if they desire. The deposition to be written by the officer or the deponent or some disinterested person, in the presence and under the direction of the officer, read to or by the deponent and subscribed by him. Officer to annex his certificate, stating that the deponent was sworn according to law, who wrote the deposition, if in the presence of the officer, whether the adverse party were present, time, place and the hour of taking. Officer shall sign and attest the certificate, and seal it if he has an official seal, the same to be then sealed up in an envelope, directed to the clerk of the court where the cause is pending, indorse on the envelope the names of the parties and the witnesses whose depositions are inclosed.

§ 365. Iowa—May be taken before any person authorized to administer oaths, or by commissioners on interrogatories. If the action is by equitable proceedings and to be tried on written evidence, then, either party may take the deposition. WHO MAY ACT—the clerk or judge of any court of record or any commissioner of deeds appointed by the governor of this state to act in another state, any notary, consul or consular agent of the United States, within their jurisdiction. Reasonable notice to be given the adverse party as to name of witness, time, place, when and where taken. Cannot take on election day or the Fourth of July. Party desiring deposition may select the commissioners or the parties may agree, or the court may appoint any other individual. NOTICE—when served on the attorney, ten days; on the party, five days; allowance for travel of one day for each thirty miles. No party is required to take depositions when the court is in actual session. Notice to be accompanied with the interrogatories to be asked. WHO TO SERVE NOTICE—the clerk of the court where the case is pending. If in an inferior court, the clerk of the circuit court. CROSS-INTERROGATORIES—at or before the time the adverse party may file cross-interrogatories. If not filed, the clerk shall file the following: 1. Are you directly or indirectly interested in this action? and if interested, explain the interest you have. 2. Are all the statements in the foregoing answers made from your personal knowledge? and if not, do your answers show what are made from your personal knowledge, and what are from information, and the source of that information? if not, now show what is from information, and give its source. 3. State everything you know concerning the subject of this action favorable to either party. Notice, or notice and interrogatories, may be served by the same persons on the same persons, in the same manner, and may be returned,

and the return shall be authenticated in the same way, as should be an original notice in the same cause when served other than by publication. It may be served on the attorney of the adverse party personally. **DEPOSITION COMMISSION FORM**—issues in the name of the court and under its seal. It must be signed by the clerk and need contain nothing but the authority conferred upon the commissioner, instructions to guide him, and a statement of the cause and court in which the testimony is to be used, and a copy of the interrogatories on each side appended. **HOW TAKEN**—person taking must cause the interrogatories propounded to be written out, the answers immediately underneath; as near the language of the witness as practicable, if parties require it. Must be read, sworn and subscribed to by the witness. Exhibits made by the witness must be appended to the deposition. Officer to certify that it was subscribed and sworn to by the deponent at the time and place mentioned. The deposition, commission, etc., to be sealed up and returned to the clerk of the court by mail unless otherwise agreed by the parties. Neither party to be present, unless both are present, or their attorneys, when taken upon interrogatories. The certificate shall state such fact. The title of the cause to be on the outside of the envelopment. When by the laws of any other state or country testimony may be taken in this state to be used therein, the persons authorized to take such depositions have power to issue subpoenas and compel obedience thereto, to administer oaths, and to do any other act of a court which is necessary for the accomplishment of their purpose. Any sheriff or constable shall serve their subpoenas and make return. If a party to a suit in his own right, on being subpoenaed, fails to appear and testify, the other party may have a continuance, at the cost of the delinquent. If the party shows that he could not have a full personal knowledge of the transaction, the court may order his pleading to be taken as true, but subject to reconsideration during the term of the court. A deposition to be taken before a judge or justice of the peace merely by name of office must contain an authentication by the clerk of the court under his seal of office, the fact that the person who took the deposition is really such officer. Taken in shorthand, the writer shall be sworn to take correctly and truly, and make correct extension into long hand, typewriting or print, the extension to be certified by the person taking and shall be received as the deposition. The shorthand notes shall be read to the witness, who shall sign, and file them with the extension. A defendant may examine witnesses in civil and criminal cases, conditionally or on commission.

§ 366. **Kansas**—May be used only when the witness is not a resident of or absent from the county, when age, infirmity or imprisonment prevents, or when the oral testimony of the witness is not required. Either party may take, after service upon the defendant. **BEFORE WHOM—IN THIS STATE**—before a judge or clerk of a court of record, county clerk, justice of the peace, notary public, mayor, chief magistrate of any city or town corporate, before a master commissioner, or any person

empowered by special commission. Authority must be derived from the state, if for use in the state. OUT OF THE STATE—for use in the state—may be taken before by a judge, justice or chancellor of any court of record, a justice of the peace, notary, mayor, or chief magistrate of any city or town corporate, a commissioner appointed by the governor of this state, or any person authorized by special commission from this state. Officer taking must not be related or interested. Any court of record in this state or any judge thereof can grant a commission. Person must be named, court seal attached, written interrogatories prepared, unless parties agree otherwise. Written notice to be given the adverse party (unless a special commission) allowing time for travel and one day's preparation, exclusive of Sunday. The action, name of court, time and place to be specified. Adjournment from day to day, if stated in the notice. Notice of taking may be given by publication in the county newspaper three consecutive weeks, when the adverse party is absent or a nonresident of the state. If there is no county paper, then the one circulating there generally. It must contain all that is required in a written notice and proved in the usual way. If taken by officers having an official seal, it must be authenticated therewith and their signature. Officers having no official seal who reside out of this state shall sign and certify to the deposition and in addition have their act and qualification certified to by the official certificate and seal of any secretary or officer of the territory having the great seal thereof, or of the clerk or prothonotary of any court having a seal. If the deposition is taken in this state by any officer having no seal or within or without the state by a special commissioner, the officer's official signature is sufficient. The deposition to be written in the officer's presence either by the witness, a disinterested person, or by the officer, and subscribed to by the witness. It must be sealed up and indorsed on the outside with the title of the cause, the name of the officer and by him addressed and transmitted to the clerk of the court of the action, there to remain sealed until opened by order of the court. It may be read in any stage of the action, or other action in the same matter. The officer taking must certify on the deposition that the witness was first sworn to tell the truth, the whole truth and nothing but the truth, by whom the deposition was reduced to writing, that it was written and subscribed in the officer's presence, that it was taken at the time and place specified in the notice. The filing of the deposition must be at least one day before the trial. FEES—for taking in this state—swearing each witness, 10c; each subpoena, attachment, order or commitment, 50c; deposition, per 100 words, and certificate, 15c; deposition can be held for fees. The fees of the sheriff and witnesses shall be added to the cost of taking. Witness fees, per day, \$1.50; witness fees before a justice of the peace, per day, 75c, and per mile travel, 5c.

§ 367. **Kentucky**—IN THE STATE—taken before examiners, judge or clerk of court, justice of the peace or notary public. OUT OF THE

STATE—before a commissioner appointed by the governor, commissioner appointed by consent of parties or by order of court, judge of court, justice of the peace, mayor of a city or notary public. **MANNER OF TAKING**—reasonable notice to adverse party, allowing one day for each thirty miles of travel, one day of preparation, or two days if more than one hundred miles. Adjournment permitted if attendance of witness cannot be procured, but officer's certificate must note cause, posting of notice, etc. If more than three days' notice, party to whom notice is given may require interrogatories. Interrogatories may be taken on consent or court may require on stating of account, where parties are under disability, or have not appeared or where parties are numerous. When no cross-interrogatories, clerk must file. Officer taking deposition may subpoena witness. Statements of witness to be written. Neither party nor agent to be present. Officer's certificate must state when and where deposition was taken that witness was duly sworn, that it was written and subscribed in officer's presence, or by officer, and read, and whether parties or agent were present. Deposition to be delivered to clerk of court where action is pending.

§ 368. **Louisiana**—IN THE STATE—the commissions to take may be issued to a justice of the peace or any person authorized to administer oaths. The interrogatories to be served on the adverse party three days previous to forwarding them. When interrogatories have been annexed to the commission and communicated to the adverse party or his counsel, notice of time and place is unnecessary. **COMMISSIONERS OUT OF COURT**—the clerks of the parish and district courts of the state (save New Orleans parish) are constituted commissioners to take depositions. A party to a suit pending, desiring depositions, shall apply to the clerk of the court, who will proceed to take the testimony in writing, either himself or through some disinterested person in his presence, after giving, at least, two days' notice to the adverse party, or their attorneys, of the time and place; if the party or his counsel reside out of the parish, ten days' notice. The deposition shall be sworn to and signed by the witness, certified to by the clerk, under the seal of the court, and filed in the records of the suit. Should objections be made to the taking of any party, the clerk to take down the question and its answer and the objection made and by whom, on which the court will decide. The clerks of the court are empowered to compel attendance of witnesses, by subpoena or attachment, in the name of the court. In the parish of Orleans, notaries public and clerks of district courts are appointed commissioners, with all powers granted to the clerks of courts outside, they may proceed to take, on twenty-four hours' notice to the adverse party or his counsel, of the time and place. When taken, the depositions to be inclosed in an envelope and delivered to the clerk of the court where the suit is pending. Justices of the peace in this state can compel the attendance of witnesses before commissioners of other states taking depositions here. A party desiring the testimony of witness in another state, to apply to any judge having

jurisdiction of the cause, and not in open court, and it shall be sufficient simply to swear to its materiality. Service of three days' notice to be given the adverse party. Commission may issue any time thereafter. When the commission is returned, the party to use it must, after filing it in the clerk's office, file a notice or take a rule to serve on the adverse party, or his counsel, to show cause why the same should not be used as testimony. The adverse party is bound to urge his objections to any irregularities before trial. If the witness resides out of the parish, in or out of the state, he shall file his answers to the interrogatories within the period fixed by court, on the motion of the party interrogating. Notice of order fixing delay, with copy of interrogatories, to be served on the attorney representing the party interrogated; provided that when such party resides out of the parish his answers shall be taken by commission. FEES—for constable or sheriff—subpœnas, 50c; attachments, \$1.00; for commissioners, notice and copy, 25c; each subpoena or attachment and copy, 25c; writing deposition, per 100 words, 20c; affixing seal, 25c; swearing witness, 20c.

§ 369. **Maine**—Allowed when deponent is aged, infirm, sick or unable to attend, or resident out of, or is absent from the state, or bound to sea, going out of the state, or more than sixty miles from place of trial, or is a judge of the supreme, superior or probate court and prevented by official duty; when deponent resides in another town from the trial, or was resident of same town, but subsequently removed or died; when deponent confined in prison until after trial. May be taken before a justice of the peace, notary public, or a commission, when the same are disinterested parties. On application to a justice of the peace, or notary public, he may issue a summons to any deponent, except the adverse party, to appear at a designated time and place to give his deposition and shall issue notice to the adverse party to be present. The deposition may then and there be taken by him or any other justice or notary, but the deposition of the adverse party may be taken by commission. Notice to adverse party shall be served on him or his attorney, by reading it in his presence and hearing, or by giving it to him or leaving at his place or last abode an attested copy. Service may be made by officer or other person and proved on his affidavit. No attorney is recognized unless his name is indorsed upon the writ, or the summons left with defendant, or he has appeared for the party in the cause, or given notice in writing that he is attorney for the adverse party. Notice by the justice or notary to one or more of the plaintiffs or defendants is sufficient. The adverse party to be allowed one day for each twenty miles' travel, Sunday excepted. Verbal notice is sufficient, and when taken out of the state and not under a commission the adverse party shall have due notice. A witness may be compelled to attend and depose, but not to travel more than thirty miles. Deponent to be first sworn to tell the truth, the whole truth and nothing but the truth. Then examined by the party producing him, verbally or by written interroga-

stories, and then by the adverse party, by the justice and parties, if they see cause. Deposition to be written by the officer, or the deponent or some disinterested person, in the presence and under the direction of the officer; it shall be read to or by the deponent and subscribed to by him. If deception is used in taking, the deposition may be rejected. The officer, after the taking, shall certify and annex to the deposition: that the witness was sworn and when; by whom the deposition was written, and in his presence and under his direction; whether the adverse party was notified and attended; the cause and names of parties; the trial court, time and place of cause for taking. The officer shall deliver the deposition to the court, or shall close and seal it up and direct it to the court or referees. A deposition shall not be used at trial if it can be shown by adverse party that the cause for no longer exists. **OBJECTIONS**—to the competency of a deponent or to questions or answers may be made when the deposition is produced, but if taken on written interrogatories the objection shall be made before it is answered. Depositions may be used in a second suit in the same cause. The court may admit or reject depositions taken out of the state. Justices of the supreme court may issue commissions to take, outside the state, for use in suits in the state. Depositions *in perpetuum* may be taken when requested in writing under oath, briefly stating title, interest, claim, names of parties interested and witnesses desired; present same to a judge or register of probate, notary, clerk of the supreme court, or justice of the peace and quorum, with request to take the deposition; he shall then give notice of time and place of taking to all persons, the same as in other depositions. May be used in civil suits for petitions for partition of land, libels for divorce, prosecutions for maintenance of bastard children, petitions for review, trials before probate courts, arbitrators, referees and county commissioners; in cases of contested senatorial or representative elections depositions or affidavits may be taken in applications for pensions, bounties or arrears of pay under any United States law. The governor may appoint, with the advice and consent of the council, upon the written recommendation of any judge of the supreme court, competent stenographers of either sex, as commissioners to take depositions in all cases and disclosures of trustees. They shall take the oath of office, act throughout the state, hold office four years, pay \$5.00 for their commission, have the same powers in taking depositions of trustees as justices of the peace. Depositions may be taken stenographically with consent of the parties to the suit, the notes to be transcribed in full, by questions and answers read to the deponent, and signed by him, unless reading is waived by him, no changes to be made, unless in the presence of the counsel who attested the taking. All facts to be stated in the commissioner's certificate as to reading, changing, etc. Same fees allowed them as to justices of the peace, with 20c per page additional for transcripts. **FEES**—for stenographic commissioners—travel, per mile one way, and not over ten miles one way, 12c; taking transcripts, per page, 20c; subpœnas, 10c; taking affidavit or deposition of a trustee, 20c;

writing the same with caption and notifying the parties and witnesses, per page, 12c.

§ 370. **Maryland**—Courts of law and any of their judges in recess, upon written application filed by interested parties in causes before them, may direct their clerk, or the register of wills, to issue a commission for taking the deposition of witnesses outside this state who cannot be brought into court. Same duly attested to be admitted as evidence. The depositions of such witnesses may be taken by either party to a cause in this state upon giving not less than five days' notice to the opposite party of the time and place where the testimony is to be taken, the name of the commissioner, notary or justice of the peace before whom the same is proposed to be taken and names of witnesses. When taken, same to be signed by witness, unless waived by consent of the parties, and returned to the court where cause is pending. Formal notice may be dispensed with by agreement of parties. Testimony of nonresidents may be taken in the same manner. The circuit courts, or their judges, shall appoint three commissioners for the court's county, and each of the Baltimore civil courts shall appoint two commissioners for their courts to take depositions when required in their courts. Such commissioners must take an oath before a judge or justice, "that he will faithfully and impartially execute the duties of commissioner aforesaid, according to the best of his judgment." Same to be filed among the court's records. Either party in any action in said courts, after due notice to the other, or his attorney, agreeably to the court's rule, may take the deposition before any of the said commissioners. The opposite party shall be entitled to cross-examine such witness, or to examine him on notice before the same or any other commissioner. Depositions shall be certified and returned by the commissioner to the court. If the court is any other than the one by which he was appointed, then he shall have annexed to his return a certificate by the clerk under the seal of the court that he is commissioner. Any person may have the deposition of a witness taken before such commissioner, when apprehending himself to be interested, by giving ten days' notice to all opposite parties, their agent, attorney or guardian. An interested minor may have a guardian appointed for the purpose of having such deposition taken. Depositions to be written by the commissioner, signed by deponent, certified to by the commissioner and by him lodged with the clerk of the court which appointed him. The clerk shall record same and receive same compensation as for recording a deed. Courts prescribe fees.

§ 371. **Massachusetts**—Depositions may be taken in this state when the witness lives more than thirty miles from the place of trial, or is about to go out of the state, or is sick, infirm or aged. Application may be made to a justice of the peace, special commissioner, who shall issue notice to the adverse party or his attorney or agent to appear before him or any other justice of the peace or special commissioner at the time and place appointed for taking. If there are several plaintiffs, defend-

ants or parties on either side, a notice served on either of them shall be sufficient. Taken out of the state in any other manner, if taken before a notary or other person authorized, may be admitted at the discretion of the court but not unless the adverse party had sufficient notice. May be taken in this state for use in other states or governments under the same conditions before a justice of the peace of this state, or before commissioners appointed by such state or government. Depositions to perpetuate testimony may be taken in like manner. May be taken out of the state before a commission issued to one or more competent persons by the court trying the case, or before a commissioner appointed by the governor for that purpose, in or outside the United States, subject to the same conditions and objections as if taken in this state. Unless otherwise ordered, the same to be taken on written interrogatories filed in the clerk's office exhibited to the adverse party or his attorney, and cross-interrogatories to be filed by him, if he desires. If the defendant fails to appear, no notice of taking required to be given him. Notice to be served by delivering an attested copy not less than twenty-four hours before the appointed time, allowing one day for every twenty miles of travel, excluding Sundays. May be verbal by the justice or be waived by the party in writing. The deponent to be sworn to the truth, the whole truth and nothing but the truth. The officer to examine, and the parties if they desire. Testimony to be in writing. The party producing the deponent shall first examine either upon verbal or written interrogatories, then the adverse party, after which either party may propose further interrogatories. The deposition to be written by the officer or by the deponent, or by some disinterested person in the presence and under the direction of the officer. It shall be read by or to the deponent and subscribed to by him. The officer shall annex to the deposition a certificate of the time and manner of taking it, the person at whose request it was taken, the cause or suit, the reason for, and whether the adverse party attended, if not, why, and statement of notice, if any, sent. The deposition to be delivered by the officer to the court, arbitrators, referees or parties before whom the cause is pending, or inclosed and sealed by them and directed to them, and shall remain sealed until opened by them.

§ 372. **Michigan**—IN THIS STATE—taken before any judge of a United States court or state court, or any foreign court; any commissioner of a circuit court in Michigan, or of the United States or any state, or any commissioner for Michigan, or any consul, consular officer, justice of the peace, notary authorized by this state or any state or of the United States, or any foreign country to administer oaths not of counsel or attorney of either party nor interested in the cause. The seal of such court or official or a certificate under the seal of any court of record shows authority. Reasonable notice to be given the adverse party, stating names of witnesses, time and place of taking and name of party before whom taken. Any person may be compelled to appear and depose. Deposition may be taken under commission issued by the judge of the court. Written interrogatories may be attached. Courts

of record have power to compel the attendance of witnesses and the production of books. Witness to be sworn or affirmed. Can also be examined orally. Testimony can be written stenographically transcribed under the direction of the officer. Must be signed by the witness and certified to by the officer. Signatures of witnesses may be waived by agreement of parties. When deposition taken, officer must indorse. Deposition to be inclosed and indorsed by the official stating the deposition was taken and sealed up by him and how sent, also the title of court and cause, and signed. To be sent by mail or otherwise to the court where the cause is pending. FEES—for taking, certifying, sealing and forwarding, \$2.00; for each 100 words, 10c; copies furnished, per 100 words, 3c; each party to pay for their own examinations; witnesses in a court of record, per day, \$1.00; witnesses before a board or officer, per day, 75c; traveling, 10c per mile from witnesses' residences.

§ 373. Minnesota—May be taken, upon notice, before officer authorized to administer oaths, when witness is within state and more than thirty miles from place of trial or hearing; is about to go out of state, not intending to return in time for trial, is sick, infirm, aged, so that it is probable that he will be unable to attend trial, or is without state. Notice, stating reason to be served, so as to allow adverse party sufficient time, at rate of one day for hundred miles travel, and one day for preparation, exclusive of day of service and Sundays. Justice of the peace, judge or court commissioner may designate time and place by order. No notice to defaulting defendant. Examination must commence at time and place specified in order or within one hour thereafter. Either party may appear and take part. COMMISSION—issues where issue of fact has been joined, or when controversy submitted to arbitration, on application and eight days' notice, if testimony of witness is material, or when testimony of witness is necessary, and defendant has not answered or appeared without notice. When application is by plaintiff and no appearance by defendant, interrogatories may be annexed, and in other cases interrogatories served with cross-interrogatories if desired. Stipulations permitted. Witnesses to be sworn and the testimony written by the officer. Proceedings may be adjourned from day to day. Either party may appear in person or by attorney and take part. The officer to read to the witness his testimony when completed and after qualifying it the witness to sign it. The officer then to annex the notice for taking it (or the order) and his certificate under his hand and official seal (if he have one) stating his office and that by virtue thereof he was authorized to administer an oath that the witness was sworn before testifying to tell the truth and nothing but the truth relative to the cause specified in the order. TO PERPETUATE TESTIMONY—party desiring shall make a brief statement in writing of his title, claim and interests, parties in interest, their residence, etc. Name of witness, same to be delivered to the judge of a court of record, who will give notice and take.

§ 374. Mississippi—IN THE STATE—may be taken in civil causes in

the circuit court; when the witness is about to leave the state, is aged, sick or unable to attend the court; when it shall depend on the testimony of a single witness; when the witness shall be a judge of the supreme or circuit court, or chancellor, or any officer of the state or United States and on account of duties is unable to attend court; when a clerk, a court, a sheriff, or justice of the peace shall be required beyond the limits of his county residence; a female, a resident of the state more than sixty miles from the place of trial. The deposition may be taken of a witness in a civil cause before a justice of the peace, when the witness resides in a different county from the justice and under the same circumstances as the circuit courts. Affidavit shall be made by the party desiring the deposition, that the witness is material, the reasons for taking, same to be attached to the deposition. May be taken before any officer authorized to administer oaths, on ten days' notice to the adverse party or his attorney of time and place of taking. In cases of emergency, expressed in the notice, shorter time shall be sufficient. OUT OF THE STATE—party desiring the taking, shall file interrogatories with the court clerk, or justice of the peace in cases before them, serve adverse party or his attorney notice ten days before issuing the commission. The adverse party may file cross-interrogatories; the clerk or justice shall then issue a commission, annex the interrogatories and cross, as filed; the witness shall be examined by the commissioner, and may be cross-examined by the adverse party, the party desiring the deposition may examine in rebuttal. If the adverse party resides out of the state or his residence is unknown and he have no agent or attorney resident, the papers for taking may be filed with the clerk or justice. A commission may be directed to one or more commissioners in the alternative, by name, or to any judge of a court of record, justice of the peace, mayor or chief magistrate of a city or town, commissioner appointed by the governor of this state, or to any one authorized to administer oaths where the deposition is taken. Witnesses to be sworn, the commissioner to examine impartially on the interrogatories, etc. If within the state the officer may swear the witness and examine verbally or in writing as put by the parties, testimony to be fairly written down by the officer, the witness or a disinterested person in the officer's presence, and subscribed to by the witness; same with all papers and the officer's certificate, to be sealed up and directed to the clerk of the court or the justice, and transmitted in a safe, convenient manner. The clerk or justice shall open same, indorse on the time of their receipt and opening, and deposit them among the papers in the cause. The examination may be adjourned from day to day on giving notice to the parties. Depositions to perpetuate testimony may be taken in same manner through the chancery court. DEPOSITION FEES—administering oath and certificate, 50c; writing or copying deposition, per 100 words, 10c.

§ 375. Missouri—When the witness resides out of the state the party desiring may sue out of the court or its clerk, a commission to take the deposition. If before a justice of the peace, party may sue out of a

county court of record. **IN THE STATE**—may be taken before a judge, justice of the peace, notary public, or clerk of any court having a seal in vacation of court, mayor, or chief officer of a city or town having an official seal. **OUTSIDE THE STATE**—before an officer authorized by the laws of this state, or some consul or commercial or representative of the United States, having a seal, or mayor or chief officer of any city, town or borough, having a seal of office, some judge, justice of the peace, or other judicial officer, or by a notary public where the witness resides. May be taken by an officer outside this state authorized by this state, without any commission or order of court. Notice to be given adverse party or his attorney of record when residents in this state. If nonresidents, by posting notice in the office of the justice or of the clerk of the court where suit is pending. Service of notice may be by delivery to him, or by leaving a copy at his abode with some member of his family above fifteen years of age, or at his office, with his clerk, or to any local agent, if a corporation. May be by sheriff, constable, marshal or any competent witness, who shall make affidavit of service. Three days' notice and one day additional for each fifty miles' travel, for the first three hundred miles, and beyond that one day for each one hundred miles, to be given. The party commissioned to be named in the commission. Interrogatories to be attached to the commission, drawn and signed by the parties or their counsel under the direction of the judge or court. Depositions to perpetuate testimony may be taken in the same manner. **FEES**—taking deposition, administering oath and certificate, 50c; writing or copying deposition, per 100 words, 10c; taking acknowledgments, 25c. Officer taking may issue subpoenas compelling attendance of witnesses. May commit for refusal to testify. Certificate of officer taking to be appended to the deposition showing that the same was taken in his presence, subscribed and sworn to by the witness, the place, day and hour. All papers and depositions to be sealed up and directed to the court or justice before whom the case is pending. Depositions in foreign countries to be taken in the language of the witness and be translated into English by the officer taking.

§ 376. **Montana**—**IN THE STATE**—either party can apply for, before a judge or officer authorized to administer oaths. Five days' notice to be given the adverse party and one day for each twenty-five miles travel. Either party may attend. The deposition to be read over and signed by the witness, certified to by the officer, enclosed, sealed and directed and delivered to the court or parties agreed on. **OUT OF THE STATE**—may be taken any time after issue of summons or the defendant's appearance. If a special proceeding, any time after a question of fact has arisen. In the state, it may be taken as above, when the witness is a party in the action, or an officer or member of a corporation which is a party in the action, or a person whose interest the action will benefit; when the witness resides out of the county, or about to leave the county, or is infirm; when the testimony is required upon a motion, or any case where the oral testimony is not required; when the witness is

the only one who can establish facts material to the issue, provided the deposition will not be used if his presence can be procured. May be taken out of the state upon commission issued from the court, under its seal, upon an order of the court, or its judge, on the application of either party, upon five days' notice to the other. If within the United States, it may be directed to any person agreed upon by the parties, or to any judge, justice of the peace, or commissioner selected by the court or judge. IF TO ANY FOREIGN COUNTRY—it may be directed to a minister, ambassador, consul, vice consul, or consular agent of the United States in such country, or to any person agreed upon by the parties. Interrogatories may be prepared by the parties or officer granting the order for the commission, a day fixed in the order may be annexed to the commission; or, when the parties agree, the examination may be without written interrogatories. The commission must authorize to administer an oath to the witness before interrogating, to certify the deposition, to inclose and direct same to the court or person agreed upon, and forward it. To perpetuate testimony, applicant to petition a judge of the district court on oath, and give the adverse parties' names, the names of witnesses, and any other necessary matter. The judge will make an order, naming the officer to take, prescribing notice. If out of the state, the examination to be by question and answer and by commission, interrogatories to be settled as in other depositions. When complete, read and returned as in other depositions.

§ 377. Nebraska—May be used when witness is not a resident of the county or where tried; when witness is infirm, aged, imprisoned, dead or unable to attend court; when the testimony is required upon a motion, or any case where oral testimony is not required. Either party may commence taking testimony at any time after service upon the defendant. WHO MAY TAKE—IN THIS STATE—a judge or clerk of the supreme or district court, a county judge, justice of the peace, notary, mayor, or chief magistrate of any city or town incorporated, master commissioner, special commission. Officer's authority must be derived within the state. OUT OF THE STATE—a judge, justice or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, state commissioner of deeds, or a special commission. COMMISSION—officer taking must be disinterested, no relative or attorney. Any court of record of this state, or its judge can commission to take in or out of the state. The person commissioned must be named therein, the seal of the court attached and it must be taken upon written interrogatories unless otherwise agreed. Written notice to be given the adverse party, or his attorney, specifying the action, time and place (unless taken under a special commission), sufficient time allowed by the usual route of travel and one day for preparation, exclusive of Sundays and day of service and examination, if the notice so states, adjournment may be had from day to day. Notice to state the names of witnesses. If taken out of the state or fifty miles distant from the place of trial, the adverse party may serve cross-interrogatories within forty-eight hours to the party taking, who

shall transmit them to the officer. When the adverse party is absent or a nonresident and has no agent or attorney, he may be notified by publishing three consecutive weeks in a paper of such county of general circulation, notice to continue same as if written. The deposition to be written in the presence of the officer, subscribed to by the witness; when complete, to be sealed up, title of cause, name of officer indorsed thereon, addressed and transmitted to the clerk of the court. Officer taking shall certify that the witness was first sworn to tell the truth, the whole truth and nothing but the truth; that the taking was reduced to writing by (naming party); that it was written and subscribed in the presence of the officer certifying; that it was taken at the time and place specified in the notice. It must be filed in court, at least one day before trial. FEES—allowed in the state—swearing each witness, 5c; each subpoena, attachment or commitment, 50c; each 100 words in deposition and certificate, 10c. Officer may retain deposition until his fees are paid; also, if so directed by the persons entitled, he may retain for sheriff and witness' fees until paid.

§ 378. Nevada—May be taken any time after service of the summons or appearance; in special proceedings, after a question of fact has arisen; when the witness is a party, or a person for whose benefit the action is prosecuted or defended; is officer of corporation for whose benefit action is prosecuted or defended; resides out of the county, is about to leave the county, to be absent when required; is infirm, or resides fifty miles from the trial. IN THE STATE—may be taken before any judge, clerk or a court, justice of the peace or notary; notice to be given the adverse party of time, place, and a copy of an affidavit showing the case is one mentioned as above. Forty days after the service of summons by publication and any time thereafter, when the defendant has not appeared, and his residence is unknown, notice may be served upon the clerk of the court where the action is pending, at least five days, and in addition one day for every twenty-five miles the party served shall have to travel, unless for cause shown the judge, by order, prescribed a shorter time. Either party may attend and properly question. When completed it shall be read to the witness, corrected and subscribed to by him, certified to by the officer, inclosed, sealed and directed to the clerk of the court or to such person as the parties may agree to in writing, and delivered by mail or personally. OUT OF THE STATE—shall be taken upon a commission issued from the court, under its seal, on the application of either party, upon five days' previous notice to the other, to a person agreed upon by the parties. If they do not agree, then to any judge or justice of the peace selected by the officer, or to a commissioner appointed by the governor to take affidavits and depositions in other states. The interrogatories to be agreed upon by the parties or, if they disagree, by the officer granting the order, time and place may be annexed to the commission. The commission shall authorize the commissioner to administer an oath to the witness and then take the deposition, to certify it to the court, sealed and directed to its clerk or other parties as agreed, to be forwarded by mail

or in person. Depositions to perpetuate testimony may be done in the same manner, by application to the district judge, by petition on oath.

§ 379. **New Hampshire**—Any justice or notary may issue writs for witnesses to appear before himself or other justices or notary to give lawful depositions. A person may be summoned to testify or give deposition, by reading to him the writ and tendering the fees for travel to and from the place desired and for one day's attendance. If the party fails to appear, to testify, or depose, without reasonable excuse, subject to liability to the party injured, for damages sustained thereby. Every court, justice or notary before whom summoned may bring such party by attachment, and fine him, not exceeding \$10 if imposed by a justice or notary or police court, and not exceeding \$50, if imposed by any other court, and add costs. Depositions shall be sealed up by the officer directed to the court or justice where they are to be used. The party instituting shall give written notice to adverse party, signed by a justice or notary, of the day, hour and place of taking, to be left at his abode if resident of the state, and within twenty miles of the place of taking, or of the party taking, a reasonable time before. If the adverse party resides out of the state or twenty miles from the place or from the party requesting the taking, notice may be given his agent or attorney. No person shall be deemed an agent or attorney unless he has indorsed the writ or has appeared as such or given notice in writing. No person shall write the testimony who would be disqualified to act as juror at the trial, except exemption as a juror. Witness to subscribe to the deposition and make oath to the truth of same. The magistrate shall certify it, with time and place of taking, stating whether the adverse party was present or was notified or did not object. A copy of the notice sent to the adverse party, with the return or affidavit of officer leaving it, shall be annexed to the deposition when the adverse party fails to attend. Deposition to be filed within ten days after taking with the clerk of the court where case is pending. Any justice or notary in the state, any commissioner appointed under the laws of the state to take depositions in other states, any judge, justice, or notary in any other state or country, may take depositions. Any judge of the superior court may appoint a commissioner to take outside the state for civil causes in his court, who shall have full power to act according to the laws of the state or country where the taking is done.

§ 380. **New Jersey**—IN THE STATE—may be taken when the witness is aged, infirm, sick, or is about to go out of the state; may be taken *de bene esse* before a justice of the supreme court, or judge of the common pleas court, supreme court commissioner, master in chancery, the officer taking to give the adverse party immediate notice or at such short day as the case requires. Witness may be compelled to appear and testify and be allowed compensation. Witness to be first sworn to the truth. The testimony to be in writing, subscribed to by the witness in the presence of the officer taking it, and with certificate of reasons for taking, and the notice to be delivered by the officer with his own hand

to the judge or clerk of the court, or it may be sealed up, directed and transmitted by mail or private messenger, who shall open and file it as a record. Person transmitting deposition shall make oath of delivery. May be taken stenographically but stenographer to be sworn to make true transcript. OUT OF THE STATE—of witnesses—the judge of any court where cause is pending or during vacation, on affidavit, to issue a commission under the seal of the court, to such person or persons as the court or judge may think fit, to examine *de bene esse* the witness on oath or affirmation. Names of witnesses to be in the commission, the interrogatories to be drawn and signed by the parties or their attorneys, with the court or judge's approval, each being allowed to insert such questions as deemed proper, the same to be annexed to the commission. The deposition may be taken by commission or upon notice of any party to a suit, residing out of this state. Depositions out of this state may be taken *de bene esse* before any judge of any supreme, circuit, district or common pleas court or before a commissioner of deeds for this state where witness resides, or before a special commissioner appointed by the court; provided notice be given adverse party, or his attorney, that they may be present, time being allowed for travel (one day for every fifty miles) in all cases, ten days, exclusive of Sundays, or if in a foreign country or a Pacific Ocean state, the court shall direct the time or any judge thereof in chambers. The officer taking shall take oath to fairly and impartially take the testimony before a party authorized to take oaths in his state or country.

§ 381. New Mexico—May be taken to be used in any court of this state when the witness is sick or absent from the state or county or about to leave same. IN THE STATE—it may be taken before any district judge, clerk of district court, county clerk, probate judge, or any notary of the county where witness resides. The party desiring the taking shall first notify the adverse party five days before issuance of commission. The notice shall state name and residence of witness, place where found, suit pending. In cases where service is by publication, must be filed twenty days before issuance of commission. IN OTHER STATES—before any clerk of a court of record having a seal, any notary, any commissioner of deeds, where witness resides. IF TAKEN ABROAD—any notary, United States minister, charge d'affaires, consul, vice consul, consul general, consular or commercial agent. When taken, to be inclosed and sealed by the officer before whom taken, and by him delivered to the court, or its clerk, where the case is being tried. Officer's certificate must show that the witness was sworn to the truth of his answers at the time that his signature was appended. Officer may adjourn or postpone taking as necessary, at cost of party taking. Officer may subpœna witness. Deposition may be taken *ex parte* if parties interested fail to attend after notice. Clerk of the court shall notify the parties in the case on the return of the deposition and they have ten days to offer objections to it. Depositions may be taken to perpetuate testimony.

§ 382. **New York**—IN THE STATE—depositions may be taken on filing affidavit with judge where suit is pending, or with county judge, if pending in the supreme court, or with judge of supreme court or county judge if action is expected to be brought, stating names of parties to action, if they have appeared, name and address of attorney, nature of action, substance of judgment demanded, nature of defense, and if action is not pending, nature of controversy expected to be involved; also name and residence of person to be examined, that testimony is material. If action is pending, that person to be examined is about to depart from state, is sick or infirm, so as to afford reasonable ground to believe that he will be unable to attend trial, or that similar circumstance exist. If no action is pending, that adverse party is of full age, resident of state, or that he has office in state, giving address. Same information required where two or more adverse parties and statement of circumstances rendering necessary perpetuation of testimony. If corporation to be examined, names of officers thereof whose testimony is necessary or material, or books and papers to be inspected or produced, should be stated. **ORDER FOR EXAMINATION**—must be granted by judge to whom affidavit is presented, if action is pending; if not pending, must be granted if reasonable ground of good faith of application. Order may limit examination of party. Must direct person to be examined to appear before judge or referee named at time and place specified. Order must also direct service of copy to be made in state not more than twenty nor less than five days before time fixed for examination, unless special circumstances exist making different time necessary. **WITNESS FEES**—to be paid or tendered when copy is served. Attendance of witness may be compelled. Order must be served on attorney of party who has appeared together with affidavit, or on party who has not appeared as directed by order. If no action is pending, must be served on expected adverse parties. Upon proof of service, judge or referee must make deposition. May adjourn to another time and place. **DEPOSITION BY CONSENT**—may be taken in accordance with stipulation. **EXAMINATION**—subject to same rules as examination at trial. Must be read to and subscribed by witness, certified by referee, and filed in office of clerk within ten days; or, if action is not pending, in office of clerk of county where taken, together with stipulation, or order, affidavit for deposition, proof of service of copy of order and affidavit. Questions not answered must be reported to court, who must determine relevancy and whether witness must answer. **WITHOUT THE STATE**—may be taken on application of either party, by affidavit. **COMMISSION**—to issue when party is in default and testimony is required on assessment of damages, writ of inquiry, or reference, to enable court to render final judgment; where testimony is required to carry into effect final judgment rendered; where new trial may be granted on motion and testimony is material and necessary; where issues are joined and there is apprehension that witness may die, become unable to give testimony, or remove; where issue is joined and testimony is material to applicant and in special proceedings. Order must be

granted, unless application is not in good faith, except when motion for new trial is pending in which case granting of order is discretionary. NOTICE—of application must be given to adverse party unless in default. Terms may be imposed when order is granted. Interrogatories, unless settled by consent, must be settled on notice by judge of court, or in supreme court, by county judge. Interrogatories must be attached to commission. Unless parties stipulate manner of returning, judge must indorse direction. Unless directed to be returned by agent must be returned through post office. COMMISSION TO EXAMINE ON ORAL QUESTIONS—may issue. May be taken before person agreed upon, chancellor or judge of court of record, mayor or chief magistrate of city, justice of the peace, if disinterested. MANNER OF TAKING—when no interrogatories, substance of testimony to be written. Oath or affirmation administered. Deposition read to or by witness to be subscribed. Copies of exhibits, if not surrendered, to be annexed. Commissioner to annex his name to each half sheet of deposition, close deposition under seal and address packet to clerk of court at official residence. Must be mailed immediately if so directed, or delivered to agent if so directed.

§ 383. North Carolina—Any party in a civil action or special proceedings may take the deposition of persons whose evidence he may desire, upon giving notice, without any special order, unless the witness is outside the United States. Written notice must be served on the adverse party or his attorney. If adverse party resides within ten miles of the place of the taking, three days' notice. Allow one day more for each additional twenty miles, unless it is to be taken within ten miles of a railway in running order, when one day only shall be given for every hundred miles of railway to the place of taking. If beyond the state, ten days' notice to be given, when the party whose deposition is to be taken resides within ten miles of a railway connecting with a line of railway within twenty miles of the place where the person notified resides. In other cases when there are no railways, twenty days' notice. Objection to the reading of the deposition, on account of insufficient notice, must be proved. Depositions shall be taken on commission, issuing from the court and under its seal, by one or more commissioners not of kin to either party, appointed by the clerk, subscribed to and sealed up by the officers and returned to the court, the clerk to open and pass upon them, first giving the parties or their attorneys not less than one day's notice. When passed upon by the clerk, without appeal, or by the judge upon appeal from the clerk's order, shall be deemed legal evidence, if the witness is competent. Commissioners can compel attendance to testify under penalty. Sheriff to serve the subpoena and make return. The witness to be first sworn. If the witness be summoned on five days' time and fails to appear before a commissioner acting under authority from courts of another state, he shall forfeit and pay to the party at whose instance he was summoned, \$50, and on the trial for such penalty the summons and return shall be prima facie evidence to entitle the plaintiff to judgment. If the de-

faulting witness was to appear before a commission issued by a court of this state, the fine shall be \$40, but execution shall not issue until the same be ordered by the court giving witness time to show cause.

§ 384. **North Dakota**—WHO MAY TAKE—IN THE STATE—a judge or clerk of the supreme or district court, a justice of the peace, notary public, United States circuit or district court commissioner or any specially empowered commission. OUT OF THE STATE—a judge, justice or chancellor, or clerk of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the governor of this state, or any specially empowered commission by any court of this state. Officer taking must not be a relative or interested. Any court of record, or its judge, of this state can grant a commission within or without the state, upon the application of either party, upon five days' notice to the other. It must be issued to a person or persons therein named by the clerk under the seal of the court; must be taken upon written interrogatories, direct and cross, as attached to the commission by the clerk. Unless the parties agree to the interrogatories, the court or judge to settle it upon five days' notice. The officer taking shall certify under his signature that the witness was first sworn to testify the truth, the whole truth and nothing but the truth, was reduced to writing by (naming him), was written and subscribed to in the presence of the officer, and was taken at the time and place specified in the notice. When offered in court it must be shown to the satisfaction of the court why the witness cannot be present. The deposition to be filed in court at least one day before trial. When taken must be sealed up, the title of the cause indorsed on the back, with the name of the officer, and addressed to the clerk of the court, there to remain under seal until opened by order of the court or at the request of a party to the action, or his attorney. A deposition is deemed the evidence of the party reading it, and may be read at any stage of the proceeding. The deposition must be authenticated by the seal of office of the party taking it; if they have no official seal then it must be authenticated by some state officer having a seal, together with the officer's certificate. If taken by a special commissioner, his signature is sufficient.

§ 385. **Ohio**—The deposition of a witness may be used only when he is not a resident or is absent from the county where the proceeding is pending; when he is dead, or from age, infirmity or imprisonment is unable to attend court; when the testimony is required upon a motion, or where the oral examination of the witness is not required. Either party may commence taking testimony by deposition at any time after service upon the defendant. Testimony taken in an action on the order of a court, by a referee, master commissioner, or special master commissioner, subscribed by the witness and reported to the court by the officer, may be used as a deposition taken in the case; when the testimony is required in an action pending without this state. IN THIS STATE—depositions may be taken before a judge or clerk of the supreme, circuit or common pleas court, or a probate judge, justice of

the peace, notary public, mayor, master commissioner, official stenographer of any court in the state, or any person empowered by special commission; but depositions taken in this state to be used therein must be taken by an officer or person whose authority is derived within the state, and if to be used out of the state they may be taken before a commissioner or officer who derives his authority from the state, district or territory in which they are to be used. OUT OF THE STATE—before any judge, justice, or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any municipal corporation, a commissioner appointed by the governor of this state to take depositions, or any person authorized by a special commission from this state. The officer must not be a relative or attorney of either party, or interested. Any court of record of this state, or judge thereof, may grant a commission to take depositions within or without the state. It must be issued by the clerk and under the seal of the court. Persons to whom granted must be named. It must be taken on written interrogatories, unless parties otherwise agree. Written notice to be given adverse party, his agent or attorney, unless taken under special commission, action to be specified, the name of the court where used, time and place of taking, and if the deposition of a party to the suit be taken, it shall not be used in his own behalf unless so specified in the notice. The deposition to be used only against such parties as are served with notice in one of the modes prescribed, sufficient time to be allowed the adverse party, exclusive of Sundays, the day of service, and one day for preparation, to travel by the usual routes and conveyances; the examination may adjourn from day to day, if so stated in the notice. If the adverse party is absent or a nonresident of the state, and has no agent or attorney of record therein, he may be notified by publication for three consecutive weeks in the county newspaper where the action is pending; if no paper is printed there, then in one of general circulation in the county, printed in the state, the publication to contain all that is required in a written notice and proved by affidavit. The deposition to be written in the presence of the officer before whom taken, either by the officer, the witness, or some disinterested person, and subscribed to by the witness. It shall be sealed in an envelope indorsed with the title of the cause, the name of the officer taking it and by him addressed and transmitted to the clerk of the court, there to remain unopened until so ordered by the court, or at the request of a party to the action or his attorney. Depositions may be admitted as evidence in a civil action pending before a justice of the peace, mayor or other judicial officer of a municipal corporation, or before arbitrators, a referee or a master. A deposition may be read in any stage of the action or in any other action upon the same matter between the same parties subject to exceptions mentioned. If taken by a judicial or other officer having a seal of office, whether resident in the state or elsewhere, shall be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal. No other authentication is required. If the officer has no offi-

cial seal and the deposition was not taken in this state, it shall be certified and signed by the officer and further authenticated, either by parol proof in court, or by the certificate and seal of the secretary or other officer of state who is the custodian of the great seal of the state, or the certificate and official seal of the clerk or prothonotary of any court of the state where taken, attesting that such officer was, at the time of taking, authorized to take. If the deposition is taken in this state by an officer not having a seal, or within or without the state under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commission before whom taken; and when a deposition is not certified according to law, the fact neglected to be certified may be shown by parol proof. The officer's certificate shall show: that the witness was first sworn to tell the truth, the whole truth and nothing but the truth; that the deposition was reduced to writing by some proper person, naming him; that the deposition was written and subscribed in the presence of the officers certifying thereto, that the deposition was taken at the time and place specified in the notice. But if the deposition be taken out of the state, by an officer authorized, the certificate may be in the foregoing form, or in the form authorized by the laws of the place where taken; and in the latter case the certificate shall be deemed *prima facie*, as made in accordance with the laws of the place where made. Notaries public have power to compel the attendance of witnesses and to punish for contempt when taking depositions. Exceptions to depositions shall be in writing and specify the grounds of objections, and be filed with the papers in the cause: No exceptions other than for incompetency or irrelevancy shall be regarded unless made and filed before the commencement of the trial; the court shall decide these before trial. Errors of the court in its decisions upon exceptions are waived unless excepted to. The deposition must be filed in court at least one day before the trial. FEES—for taking depositions in this state—swearing each witness, 4c; each subpoena attachment or commitment, 50c; each 100 words in the deposition and certificate, 10c. The officer shall retain the depositions until paid for; he shall also tax the costs of sheriff or other officers serving process and fees of witnesses; he may, if directed by a person entitled thereto, retain the depositions until his fees are paid.

§ 386. Oklahoma—May be used when the witness does not reside in the county or is absent; when attendance is prevented from age, infirmity, imprisonment or death; when testimony is required upon a motion, or in any case where the oral testimony is not required. Either party may commence taking testimony after service of notice. WHO MAY TAKE IN THE STATE—a judge or clerk of a court of record, a county clerk, justice of the peace, notary public, a master commissioner or special commission. Authority must be derived within the state. OUT OF THE STATE—a judge, justice or chancellor, of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, or any person authorized by a special commission from this territory. The officer must not be inter-

ested in the case nor related to either party. Any court of record of the state or any judge thereof can grant a commission to take. The commission, name of the officer who takes, must be under the seal of the court. Deposition must be upon written interrogatories, unless parties agree otherwise. Unless by special commission, written notice to be given the adverse party, specifying action, court, time and place, allowing time for travel and one day for preparation, exclusive of Sunday and day of service. May adjourn from day to day, if notice so states. When adverse party is absent, or a nonresident, and has no representative in the state, three consecutive weeks' publication in a county paper is required. The deposition must be written in the presence of the officer, either by him, the witness or a disinterested person, signed by the witness, sealed up, and indorsed with the title of the case, name of the officer, certified to by him, addressed and transmitted to the clerk of the court, and remain under seal until opened by order of court. The officer's certificate must state the above facts and that the witness was first sworn to the truth, the whole truth and nothing but the truth; it must be filed in court one day before trial. FEES—allowed: swearing each witness, 10c; each subpoena, attachment or order of commitment, 50c; each 100 words, including certificate, 15c. Deposition may be retained until fees are paid.

§ 387. Oregon—May be taken in or out of the state in an action at law, any time after the service of summons or the appearance of the defendant, and in special proceedings any time after a question of fact has arisen. In this state, when the witness' residence is such that he is not obliged to attend on a subpoena, is a party to the action, is about to leave the county and go more than twenty miles from place of trial, is infirm, when the testimony is required upon a motion, or where the oral examination is not required. May be taken in this state before the clerk of a court of record or other person authorized to administer oaths, three days' notice to be given the adverse party if not over twenty-five miles, and one day additional for every twenty-five miles, unless the courts direct otherwise. Either party may attend and examine. Deposition to be written by the officer, or by the witness or some disinterested person in his presence. When completed it shall be read to or by the witness and subscribed by him. Officer to certify the above was done (under his official seal, if he have one), and at a place mentioned, between certain hours of a day or days mentioned, and that the witness was first sworn to the truth, the whole truth and nothing but the truth. Same to be inclosed in a sealed envelope, directed to the clerk of the court or the justice of the peace where action is pending, and forwarded by mail or the usual channel. It may be used by either party, at any time. The testimony of a witness may be taken conditionally and perpetuated in the usual manner. Without the state, may be taken upon commission issued by the court, or without a commission by the commission appointed by the governor of this state to take depositions in other states or counties. The commission may be issued by the clerk of the court, or by a justice of the peace in a cause in his

court, on the application of either party, upon five days' previous notice to the other. It shall be issued to a person agreed upon by the parties, or, if they do not agree, to a judge, justice of the peace, notary public, or clerk of a court, selected by the officer issuing it. Interrogatories, direct and cross, as the parties may prepare, or the clerk or justice, may be annexed to the commission, or if the parties agree, without written interrogatories. Commission shall authorize the commissioner to administer an oath to the witness, to take deposition as per interrogatories, or in respect to the question in dispute, to certify to the court in a sealed envelope directed to the clerk or justice issuing same, or other person designated, and forwarded to him by mail, or other channel. In any other state it may be taken before a commissioner appointed by the governor of this state for that purpose upon giving the adverse party eight days' notice of the time and place, name of the commissioner and the witness, if the distance of the place of examination, from the place where the testimony is to be used, does not exceed fifty miles, and one additional day for every additional twenty-five miles. Either party may attend, and examine the witnesses upon oral interrogatories, but if either party by written notice to the other, within three days from the service of the original notice, requires it, it shall be taken or written interrogatories to be settled, if not agreed upon, by the same officer and in the same manner as in case of deposition upon commission and in such case the deposition shall be taken, certified and directed by the commissioner in the same manner as a deposition upon commission.

§ 388. **Pennsylvania**—Upon the affidavit of either party or their agent, that the testimony of any material witness is wanted, who resides out of the county, or from infirmity, or other causes, cannot be obtained personally, a cause shall be postponed to a certain day, within such reasonable time as the distance of the witness, the season of the year and the circumstances of the roads may render it proper, to obtain the deposition of the witness wanted; and whenever a cause is postponed at the instance of the defendant, he shall enter into a recognizance for a sum sufficient to cover the demand in question together with the costs, with one sufficient surety (for his appearance on the day fixed), and whenever a rule for taking the deposition of a witness or witnesses shall be applied for, as aforesaid, the party so applying shall file a copy of the interrogatories or questions intended to be asked the witnesses; and a copy of the same shall be delivered to the opposite party or his agent, who may also file such additional questions as he may think proper, provided, it be done within four days after receipt of the copy; which rule and interrogatories being certified by the justice before whom the cause is pending, shall be sufficient authority for the justice who may be named in said rule, to take the answers of such witnesses as may be named therein; but where the witnesses reside in the county, or in cases where the parties or their agents agree to enter a rule to take depositions, it may be done without filing interrogatories, upon notice given, agreeably to the rule, of the time and place appointed for the examination. Testimony so taken shall be read in evidence on

the trial before the justice or referee. Either party may obtain testimony out of the state for causes pending before a justice of the peace in the same manner. When not convenient to take before a justice of the peace, a commissioner may be appointed, at the suggestion of the party or parties, who on receipt of his commission, with a copy of the rule and interrogatories, certified by the alderman or justice of the peace, shall have authority to administer oaths and take the answers of the witnesses named. Same shall be as good as if taken before a justice of the peace. A court of common pleas, on receipt of letters rogatory from any court in the United States, may compel the attendance of witnesses, penalties to be attached, and a fine not exceeding \$100 imposed. Examiners or commissioners may on request appoint a stenographer; court to direct compensation together with such reasonable additional amount as the examiner may suggest, including traveling and hotel expenses and extra services.

§ 389. Philippine Islands—OUT OF THE PHILIPPINE ISLANDS—depositions may be taken by a commission issued by the court under its seal upon five days' notice to the adverse party. If the court be that of a justice of the peace the commission shall have attached to it a certificate under seal, by the clerk of the court of first instance of the province in which the court is held, to the effect that the person issuing the same was an active justice of the peace at the time. **WITHIN THE UNITED STATES—**if issued to any place, it may be directed to any person agreed upon by the parties, or to any justice of the peace, any federal or state judge, to any commissioner so authorized to take. **OUT OF THE UNITED STATES—**to any minister, ambassador, consul, vice consul or consular agent of the United States or to any person agreed upon by the parties. Interrogatories may be attached to the commission. Witness to be sworn, the deposition to be certified to the court in a sealed envelope directed to the clerk or person designated and forwarded to him. **IN THE ISLANDS—**taken before any judge, justice of the peace or notary public on serving the adverse party two days' notice with an affidavit showing that witness is party to action or member of corporation which is party, or person for whose benefit action is prosecuted or defended; that witness resides out of province, is about to leave province and will be absent; that witness is too ill or infirm to attend; that oral examination is not required and that witness is material. Reasonable time must be given the adverse party to be present. Either party may attend and put such questions direct and cross as may be proper. Deposition must be read to the witness and corrected by him if desired; he must subscribe to it and the officer certify to it, seal in a wrapper, direct and deliver it to the clerk of the court or to such person as the parties agree on in writing. The deposition must be written by the officer, or in his presence and under his direction by a disinterested person. May be taken stenographically.

§ 390. Rhode Island—Except in equity causes, any justice of the supreme court, justice of the peace, or notary public, may take depositions

of any witness to be used in the trial of a civil suit where he is a disinterested party and commenced or pending in this state or any other state or country, the adverse party or his attorney to be notified as to time and place, before the taking. If his residence or his attorney be unknown, the justice shall prescribe the method of notice. The notification shall be issued to a disinterested party by the commissioner at least twenty-four hours, exclusive of Sundays and holidays, before the taking. It shall be read to the party, if found, otherwise, a copy to be left at his usual abode; manner and time of service to be returned and sworn to before some officer authorized to take oaths. Any person may be compelled to appear and depose within this state. The supreme, probate or district court may, on motion of either party in an action pending therein, grant a commission to take depositions. IN THIS STATE—to be used in any other state or country, may be taken before any person residing in this state to whom a commission shall be directed. OUT OF THE STATE—to be used in this state, may be obtained on an order from the trial court, and taken according to the law of such state or country, or if within the United States, it shall be taken before a commissioner appointed by the governor of this state, or a judge, chancellor, justice of the peace, notary public, or civil magistrate of such state. OUT OF THE UNITED STATES—before a resident United States official or if the deponent be in the military or naval service of the United States, before a colonel, lieutenant colonel or major in the army, or before any officer in the navy not below the grade and rank of lieutenant commander. The deponent shall be sworn to testify the truth, the whole truth and nothing but the truth, and after giving testimony, shall subscribe to it in the presence of the officer taking it. The deposition may be reduced to writing by the officer or by any one under his direction and in his presence, or taken in shorthand and a transcript made in long hand, typewriting, print or other reproduction sworn to by the person reporting it, and signed by the deponent. The signature in the latter case, to be attested by the officer. The deposition to be delivered by the officer's own hand to the court, or shall, together with a certificate of its having been taken, be by the officer sealed up and directed to the court, and delivered to its clerk. For depositions in perpetual memory, the same methods are employed as in other depositions. The officer taking has the same power and authority as magistrates in acting. They can compel attendance and testimony. If party entitled to notice resides outside the state he may be served by any disinterested person. After taking, it shall be sealed up, with the petition, and directed to the clerk of the common pleas division of the supreme court in the county in which some one of the parties notified of the taking reside; if they reside outside of the state, then in the county in which the person preferring the petition resides; in case both parties reside outside the state, then in Providence county. The clerk, on its receipt, sealed and addressed, shall open and record it, on payment of the legal fees, noting on same the time received, page of the book where recorded, and return it to the party. If not recorded, it

cannot be received as evidence in any court in this state, unless it is opened in the court at the time of the hearing of the cause in which it is used.

§ 391. **South Carolina**—Any judge or clerk of the circuit court has power to grant commissions, under the seal of the court, directed to two or more commissioners, to take the depositions in writing of the witness or witnesses therein mentioned, where the witness resides without the state or county, or at a greater distance than one hundred miles from the court, or is about to go without the limits of the state before the next term of court or before trial, or when his presence cannot be procured by attendance on some public official or professional duty as an attorney at such time, or by reason of sickness or infirmity. Ten days' notice to be given the adverse party with copy of interrogatories propounded. The application must be accompanied with an affidavit showing the necessity for the taking. Either party may, in the court's discretion, on motion, and a showing that two days' notice has been given the adverse party or his attorney, be entitled to a rule to compel the attendance of any witness residing in the county, or not more than thirty miles from the court. The testimony of an officer in a lunatic asylum may be taken by commission. Subpenas may issue for witnesses to attend before the commission at a certain time and place not more than fifteen miles from his residence and answer on oath according to their knowledge the interrogatories and cross-interrogatories annexed to the commission. Persons unable to leave home by reason of sickness, age or infirmity shall be attended by the commissioners, and in case of their refusal to give evidence or answer the interrogatories, etc., they shall be liable for damages to the party injured. Clerks of the court of common pleas may take depositions, ten days' notice having been given the adverse party. All privileges and powers allowed as before the court. Clerk's fee for each witness, one dollar. Depositions *de bene esse* may be taken in civil actions pending in the court of common pleas where the witness lives outside the county or more than one hundred miles from court, or is bound for sea, going out of the state or county, or is aged or infirm. Same may be taken before any circuit court, judge or clerk, any trial justice, notary public of this state, chancellor, justice or judge of a superior or supreme court, mayor or chief magistrate of a city, trial justice, judge of a county court or court of common pleas or any of the United States or Dominion of Canada or Kingdom of Great Britain, or any notary public not being of counsel or attorney. Notice of ten days must first be given in writing by the party or his attorney to the adverse party, with notice of time and place. If impracticable, the judge of any circuit court shall determine how notice to be given. **MANNER OF TAKING**—witness to be sworn to testify the whole truth. Testimony to be reduced to writing by the officer or by the witness in officer's presence and by no other person, to be subscribed to by the witness, delivered into the court by the hand of the officer, or with a certificate of reasons for taking, and the notice given adverse party, be sealed up and

directed to the court by the officer and forwarded by mail or express. If witness is able to appear at the trial, the deposition shall not be used. **CONTEMPT OF COURT**—an attachment may issue from any circuit court for failure of the witness to answer the subpoena for attendance. Commissions issued out of any United States or other state courts for the examination of witnesses in this state, produced to a judge of the supreme or circuit courts of this state, shall have the same consideration as if issued by a court of this state and subpoena issued, with same fees and contempt proceedings as allowed in this state. Two days' time to be allowed the witness before attendance is required. He is entitled to same fees for each day's attendance as allowed in civil cases, with necessary ferriages going to and coming from, to be paid by the party requiring the deposition. Commissioners are authorized to retain the deposition until same is paid.

§ 392. **South Dakota**—IN THIS STATE—may be taken by a judge or clerk of the supreme, circuit, municipal or county court, a justice of the peace, notary, United States commissioner or any person empowered by a special commission. **OUTSIDE THE STATE**—by judge, justice or chancellor or clerk of any court of record, justice of the peace, notary, mayor or chief magistrate of a city or town corporate, a commissioner appointed by the governor of this state, or any special commission. Officer must not be a relative or attorney of either party or interested in the action. Any judge or court of record of this state can appoint a commission to take, under seal of court. **WITNESSES**—notary can issue subpoena for. For failure to attend, the notary can issue attachment. Notice to be given to adverse party allowing sufficient time to attend and one day's preparation, exclusive of Sunday and day of service. If a nonresident, it may be by publication for three weeks in county newspaper. Deposition when taken must be written by the officer, or in his presence by the witness or some disinterested person, must be subscribed to by the witness, sealed up, indorsed with the title of the case, name of the officer taking, addressed and transmitted to the clerk of the court where action is pending, to be filed at least one day before trial. Officer must state in his certificate that the witness was first sworn to tell the truth, the whole truth and nothing but the truth. That the deposition was reduced to writing by some proper person, naming him. That the deposition was written and subscribed to in his presence, giving the time, date and place specified in the notice.

§ 393. **Tennessee**—May be taken when the witness, from age, infirmity or other cause, is incapable of attending at the trial or resides out of the state, or residing in another county of the state, in which case the adverse party may have him subpoenaed; when leaving the state, or is the only witness to a material fact, or an officer of the United States, the state, or the county, or clerk of another court of record, a member of the legislature in session, clerk or officer thereof, a practicing physician or attorney, a jailer or keeper of a public prison in another county; when he is a notary public, whether a suit be pending

or not; to be evidence between the same parties in any suit then, or thereafter pending, should the notary die or remove out of the state before the trial; when the suit is brought *in forma pauperis*. The deposition of any person residing in the county may be taken by either party, but the opposite party may summon the witness, in which case he shall be examined as if summoned by the party taking the deposition. It may be taken any time after action brought, upon such notice as the court or justice may order, or upon giving the usual notice. Party exempt from attending must claim at the time; he may claim exemption by application to the court. The adverse party may compel the attendance in court, of the deponent, unless witness is exempt by law. Witness may be cross-examined by any court or justice of the peace before whom an action is pending, may make orders and issue commissions to take depositions, upon application of either party. The clerk or his deputy may act in like manner. Court or justice may prescribe notice. Parties may take without a commission, upon giving opposite party notice of time and place or by filing interrogatories. May be taken in this state for use in any other state, or foreign government. Attendance of witnesses may be compelled, by implication, to any judge of the superior courts of the state, or to any justice of the peace of the county. Witness to have two days to prepare and not obliged to leave the county. Service and return of the subpoena to be in the usual way and failure of witness to appear subjects him to the penalties of the law. Witness fees to be allowed as in cases in this state. Time of notice, five days. If out of the county, for 50 miles or less, 5 days; 50 to 100, 10 days; between 100 and 250, 15 days; 250 to 400, 20 days. If to be taken in another state west of the Rocky Mountains, such time as the court or clerk may order, not over 40 days. In foreign countries, as the court or clerk may order. Service may be made by the sheriff, coroner or constable, with the usual return notice. Service of notice as to time and place may be made on the attorney of a nonresident. If the witnesses reside out of the state or over 150 miles from place of trial, either party may take the deposition by filing interrogatories with the clerk, giving opposite party notice, who shall have ten days to file cross-interrogatories. Officer taking is vested with all the powers of a court, and to control the conduct of the parties, the officer to swear the witness, the questions to be reduced to writing before being put, and read to the witness, the answers to be written down and then read to or by the witness may be typewritten. When deposition is complete, it shall be enveloped, together with the commission and other documents, sealed, the commissioner's name written across the seal, and directed to the clerk of the court, title of cause indorsed thereon and sent to the clerk of the court. If sent by private conveyance, the person delivering must make an affidavit to the clerk that papers have not been out of his possession or opened since received by him. The court or clerk may determine whether notice shall be given to each person where more than one person is plaintiff or defendant. The clerk shall certify in the deposition how received. The commissioner can subpoena witnesses.

Penalty for failure to appear may be enforced by the tribunal having cognizance of the suit as in other cases. Depositions may be taken by any judge, justice of the peace, mayor or chief magistrate of a town or city, the clerk of any court, or any person properly commissioned or appointed by the court or clerk, not being interested, of counsel or related to either party, any notary public, in his county, and his certificate to show the county. Persons may have testimony perpetuated by petitioning the circuit or chancery court judge; he will fix the time and place. Notice to a nonresident may be given by publication in such paper as the judge directs. The evidence of a notary public may be taken and perpetuated in matters officially done by him, without petition, upon notice to the other side. Deposition of a notary may be taken, whether a suit be pending or not, on ten days' notice to the opposite party, if resident in the state, and forty days' notice out of it, to be read as evidence between the parties in any suit then or afterwards pending, should the notary die or remove from the state before the trial.

§ 394. **Texas**—May be taken when the witness is a female, is aged, infirm, sick, or when official duty prevents attendance at court; when witness resides without the state or county, or is about to leave the state or county, and probably cannot be at the trial, or to perpetuate testimony. May be taken when residents or not of the county where suit is pending, provided, the failure to secure same shall not be regarded as want of diligence. The party shall file with the court clerk, or justice of the peace, as may be, a notice of his intention with interrogatories attached. The notice to state name and residence of witness, or where he can be found, and the suit to be used in. A copy of all shall be served on the adverse party, or his attorney of record, five days before the commission issues. If the adverse party is a corporation, or joint stock association, service may be on its president, secretary, treasurer, or local agent in the county where the suit is, or by leaving it at the principal office of such corporation during office hours. On an affidavit, that either party is beyond the jurisdiction of the court, or cannot be found, or that he has no attorney of record, or his claimants have not become parties to the suit, and are unknown; by the party wishing the deposition, the clerk or justice of the peace shall cause a notice to be published in some newspaper for thirty days, stating the number of the suit, names of original parties, the court where pending, name and residence of witnesses, that a commission will issue on or after the thirtieth day. The style of the commission shall be, "The State of Texas"; it shall be dated and tested as other process; addressed to the officer, authorizing and requiring him to summon the witness before him forthwith, to take his answers under oath to the direct and cross-interrogatories, if any; a copy shall be attached to the commission, and to return without delay the commission and interrogatories and the answers of the witness thereto, to the clerk or justice of the proper court, giving his official and post office address. Cross-interrogatories may be filed by either party before commission issues. **WHO MAY TAKE—IN THE**

STATE—any clerk of the district court, any judge or clerk of the county court or any notary public of the county. IN ANY OTHER STATE—a clerk of a court of record having a seal, a notary, or commissioner of deeds in that state appointed by the governor of this state. IN FOREIGN COUNTRIES—a United States minister, commissioner, charge d'affaires, consul general, consul, vice consul, commercial agent, vice commercial agent, deputy consul, or consular agent resident in such country, or any notary public in that country. If witness fails to appear he shall be subpoenaed through the sheriff or constable of the county. Attachment, fine and imprisonment may follow. The answers shall be written, sworn to and signed by the witness. The officer shall certify that they were so taken before him, and seal it in an envelope with the commission and interrogatories, etc., write his name across the seal, indorse on the envelope the names of the parties to the suit and the witnesses, direct it to the clerk of the court or justice from whom issued. An interpreter may be summoned and sworn by the officer. Return may be made by mail, the party interested or other parties. The postmaster or his deputy shall indorse their receipt upon them, the clerk or justice likewise. If sent other than by mail, party shall make affidavit before the clerk or justice that he received them from the officer and that they have not been out of his possession nor undergone any alteration. It may be opened by the clerk or justice at the request of either party or counsel; he shall indorse upon them the date and at whose request they were opened, signing his name; they shall remain on file for either party's inspection. When cross-interrogatories have been filed and answered, either party has the right to use the deposition. When the deposition has been filed in court one day before trial, any objections to them shall be in writing and notice given to opposite counsel. They shall be read, subject to legal exceptions. Surplusage may be stricken out by the court upon objections thereto. Deposition to perpetuate testimony may be made through the proper county court, after the same manner.

§ 395. **Utah**—The testimony of a witness out of this state may be taken by deposition at any time after the service of the summons, or the appearance of the defendant, and in a special proceeding, at any time after a question of fact has arisen. IN THIS STATE—may be taken when the witness is a party to the action, or a person for whose immediate benefit the action is; when he resides out of the county in which his testimony is to be used; when he is about to leave the county where action is, and will probably be absent when required; when infirm, or his testimony is required on a motion, or in any other case where the oral testimony is not required. OUT OF THE STATE—for use in the state—may be taken upon a commission issued from the court under its seal, upon an order of the judge, or court, or justice of the peace under his hand in any case pending before either of such courts; on the application of either party, upon five days' notice to the other. If issued to any place within the United States, it may be directed to any person agreed upon by the parties, or, if they do not agree,

to any judge or notary public, or person named or commissioned by the officers issuing it. ANY COUNTRY OUT OF THE UNITED STATES—it may be directed to a United States minister, ambassador, consul, vice consul or consular agent in the country, or to any person agreed upon by the parties. Parties may prepare their interrogatories, direct and cross; if they disagree, then the officer granting the commission shall prepare, at a day fixed in the order. If the parties agree, it may be without written interrogatories. Depositions for use in other states may be taken where witness resides in this state. If a commission has been issued, by producing same to a district or probate judge here, with satisfactory affidavit as to its necessity, he may subpoena the witness to appear and testify before the commissioner at a specified time and place. If a commission has not been issued, a district or probate judge, or justice of the peace, may, on the presentation of a satisfactory affidavit, subpoena the witness to appear before him and testify. The testimony to be taken in writing, certified and transmitted to the court or judge requiring same, as the law of the state requires. May be taken in this state, before a judge or officer authorized to administer oaths, on at least five days' notice to the adverse party of the time and place of examination, together with a copy of an affidavit showing that the case is within the statute; allowing also one day for every twenty-five miles of distance to the place of examination from the residence of the party, unless, for cause shown, a judge by order prescribes a shorter time, copy of which must then be served with the notice. Either party may attend the examination and put proper questions. The deposition must be read to the witness, corrected if desired, subscribed to by him, certified to by the officer, inclosed in an envelope, sealed and directed to the clerk of the court where action is pending, or to such person as the parties in writing may agree and delivered personally or by mail. It may be used by either party at the trial. Depositions to perpetuate testimony may be taken when required.

§ 396. Vermont—WHO MAY TAKE—IN THE STATE—justices, notaries, masters in chancery, municipal and city judges, judges and registers of probate, shall have the same powers. Notary need not use his official seal. A resident commissioner of another state may take for use in the state of his appointment. OUT OF THE STATE—a superior judge may, in vacation, upon the application of a party in a suit pending in a county court, and on such notice to the adverse party, or his attorney, as the judge thinks reasonable, cause the clerk of his court to issue a commission to a person designated, to take the testimony of a person residing, or without the state; it shall be taken upon interrogatories settled by the order of the judge upon oral examination. May be taken by a justice so authorized by his state and a commissioner appointed by the governor of this state. Depositions of witnesses without this state, taken agreeable to the laws of this state, or of the state or country in which they are taken, shall be allowed in any court. TIME AND MANNER—may be taken at any reasonable time after suit is commenced, in whatever court the suit is pending, or while

suit is passing from one court to another. The party desiring it shall cause personal notice to issue from the magistrate taking, to the adverse party, or by citation signed by a justice, municipal or city judge, notary, or master in chancery, served like a writ of summons on the adverse party, or if he resides out of the state, on his attorney, if in the state. Such notice to state the time and place of taking, the name of the magistrate, give reasonable time to be present. A party may, without notice, take a deposition when the adverse party is a nonresident and has no attorney in the state; but such deposition shall be filed in court where the cause is pending at least twenty days before the trial. A magistrate of competent authority shall issue subpoenas for witnesses at the request of either party. Attachment may issue to compel attendance, and a forfeiture of \$10 and all just damages paid the party in whose behalf he is summoned. Refusing to depose when fees have been tendered shall cause commitment to jail, until he deposes and pays costs of commitment. Deposition cannot be used unless the officer to take has appeared at the place within two hours of the time mentioned in the notice. The deposition subscribed and sworn to by the witness, the authority taking shall certify it, seal it up, and deliver it to the person at whose request it was taken, superscribed, "The within deposition of A. B. was taken and sealed up by C. D. (adding his official designation)." No interested person can write the deposition. If returned to the clerk of the court unsealed or with the seal broken, it shall be rejected by the court. The provisions for taking to be used in the courts of this state shall be applicable to the taking of depositions to be used in courts without this state. Testimony *in perpetuum* may be taken on affidavit before a judge of the supreme, superior, county, municipal or city court.

§ 397. Virginia—IN THE STATE—may be taken by a justice or notary or a commissioner in chancery and, if certified under his hand, may be received without proof of the signature. OUT OF THE STATE—if the party resides out of this state, or is out of it in the service thereof, or of the United States, it may be taken before any commissioner appointed by the governor of this state, any justice, notary, or other officer authorized to take depositions in the state where the witness may be. IN A FOREIGN COUNTRY—before any person that the parties may agree upon in writing, or any American minister plenipotentiary, charge d'affaires, consul general, vice consul, commercial agent appointed by the government of the United States, or any other representative of the United States in a foreign country, or the mayor, or other magistrate of any city, town or corporation in such country or any notary therein. The officer may administer an oath to the witness, take and certify the deposition with his official seal annexed; if he have none, then the genuineness of his signature shall be authenticated by some officer of the state or country, under his official seal, unless the deposition is taken by a justice out of this state, but in the United States, or before some person agreed upon in writing by the parties, in which case it shall be received without any seal or authentication of

the signature. If taken before some person agreed upon in writing by the parties other than the officer authorized to take, the said writing must accompany the deposition, or the deposition cannot be read. No commission is necessary to take a deposition except for proving a will. Reasonable notice to be given the adverse party of the time and place of taking. The deposition may be used in several suits between the same parties involving the same controversy. Notice may be served on the party's counsel, if the party is a nonresident. The deposition may be retaken without the consent of the court first obtained, if discreet. Depositions may be read in the case when the witness is dead, out of the state or one of its judges, or a superintendent of a lunatic asylum distant more than thirty miles from the place of trial, or in any public service or office, the duties of which prevent his attending the court, or be unable to attend from sickness or infirmity, or be more than a hundred miles from the place of trial. The latter may not excuse, if good cause be shown the court. When completed it shall be certified and returned, by the officer taking it, to the clerk of the court where the case is pending or to the person before whom it is to be read. When received, the clerk or other person to whom sent, after indorsing thereon the time it was received, shall file it among the papers of the suit. It may be read by either party. Testimony may be perpetuated by filing with a commissioner in chancery a petition stating the matter.

§ 398. **Washington**—May be taken to be read in evidence in an action when witness resides out of the subdistrict (county), more than twenty miles from the place of trial; is about to leave and go more than twenty miles from the place of trial and remain; is sick, infirm, aged and unable to attend trial, or resides out of the state. Either party may commence taking testimony after service of summons upon the defendants. **IN THE STATE**—may be taken before a judge of the superior court, justice of the peace, clerk of the supreme or superior court, mayor of a city, or notary public. Notice to be served on the adverse party, his agent or attorney of record, with time to attend by the usual route and three days' preparation, exclusive of day of service and the examination day; notice to state if any adjournment, also to specify the tribunal where it is to be used and the time and place of taking. Officer may compel attendance of witnesses within twenty miles of his abode, under penalty. **OUT OF THE STATE**—may be taken by a judge, justice or chancellor or clerk of a court of record, justice of the peace, notary, mayor, chief magistrate of any city or town, or by a special commission from any court of this state. Commission to take in or out of the state may issue from any superior court or judge thereof. The commissioner must be named in the commission by the clerk, under the court seal; deposition must be upon written interrogatories, unless the parties otherwise agree. Before granting, the party applying shall serve notice of application on the adverse party, stating time and place, notice to be served as before stated. The court or judge shall settle the interrogatories the clerk shall attach to the commission. If the adverse party is a nonresident and has no agent or attorney

therein, notice may be by three consecutive weeks' publication in the county newspaper. If not printed, then in a state paper circulating generally in the county. It must contain all that is required in the notice and proved by affidavit. Deposition to be written by the officer or by the witness, or some disinterested person, in the presence and under the direction of the officer. It shall be carefully read to or by the witness, corrected and subscribed to by him. If taken up on notice it shall be certified by the officer. The officer to inclose it in an envelope, seal and direct it to the clerk of the court or justice, where case is pending, or as the parties in writing may agree. Delivery by mail or in person. It may be used by either party at the trial. It may be used in any other action in the same cause, between the same parties; provided, it shall have been filed with the court in the meantime. May be used on appeal. Deposition to perpetuate testimony may be taken on a sworn statement in writing by the party in interest, by filing same in the superior court. If pertaining to land, it shall be filed in the county where the land lies; in other cases, where the parties reside.

§ 399. *West Virginia*—May be taken in case pending, without a commission in or out of the state, by a justice or notary, commissioner in chancery, or before any officer authorized to take, in the county or state where they may be taken, and if certified under his hand, may be received without proof of the signature. On an affidavit that a witness resides out of the state, or is out of it in the service thereof, or of the United States; his deposition may be taken by or before any commissioner appointed by the governor of this state, or any justice, notary, or officer so authorized to take in the state where the witness may be. If in a foreign country, by or before such commissioner or commissioners agreed on by the parties or appointed by the court, or before any United States American minister, plenipotentiary, charge d'affaires, consul general, consul, vice consul, consular agent, vice deputy consular agent, commercial agent or vice commercial agent, or by or before the mayor or other chief magistrate of any city, town or corporation in such country or any notary public thereof. The person taking may administer an oath to the witness, take and certify the depositions with his official seal annexed, and, if he have none, the genuineness of his signature shall be authenticated by some officer of the same state or country, under his official seal; reasonable notice to be given the adverse party of the time and place of the taking. In a suit in equity, a deposition may be read if returned before the hearing of the cause, although after an interlocutory decree, if it be as to a matter not thereby adjudged, and be returned before a final decree. In a case at law, when taken on such notice, it may be read in such case, if when offered the witness be dead, out of the state, or one of its judges, or in any public office or service, the duties of which prevent attending the court, or sickness, infirmity, out of the county where case is pending; the latter, on motion to the court before trial, may not excuse.

After filing it may be read by either party. Depositions to perpetuate testimony may be taken on petition to a commissioner in chancery.

§ 400. **Wisconsin**—May be taken on application to the court or presiding judge; court to determine whether on verbal or written interrogatories; the deponent to be sworn, officer taking to insert every answer or declaration; deposition to be read and subscribed to by the witness, unless waived by counsel and so noted, sealed and delivered to the clerk of the court where matter is pending. **IN THE STATE**—may be taken by a justice of the peace, notary, court commissioner or other authorized officer; any time after action begun, notice to adverse party, agent, or attorney, giving witnesses' names, officer, time and place. Three days' notice and one day for each 300 miles or fraction. When taken without the state, commission may issue from any court of record. The party desiring it may prepare his interrogatories, state the commissioner proposed name of witness, residence of each, serve a copy on the adverse party; within ten days commission will issue, subject to the objections of adverse party. **OUTSIDE THE STATE**—may be taken before any judge or justice, court commissioner or master in chancery of any court of record in the United States or state, notary, justice of the peace, commissioner of deeds appointed by the governor of this state, or special commissioner. If for use in a court not of record, not more than thirty days' notice to be given; if for a court of record, ten days' notice to be given. One day's notice shall be sufficient in case of the depositions of additional witnesses desired to be examined, given during the course of the taking of any deposition where the parties on each side appear. In case the officer fails to appear, it may be taken before any other officer authorized by law. But in any action, in any court, no notice of the taking need be given to a defendant, who, having been served with process, fails to appear within the time allowed. **IN A FOREIGN COUNTRY**—may be taken by commission by any judge or clerk of a court of such country, any notary, consul, vice consul, deputy consul or consular agent of the United States, resident in such country, by any officer authorized by the laws of the United States, or by a commissioner or commissioners, whether otherwise authorized or not, appointed for that purpose by such commission. When it shall appear to the judge of the court from which the commission issues that the witness is unable to speak or understand the English language, such judge may appoint a competent and disinterested person to translate the commission, rules, interrogatories, etc. Same shall be sent to the commissioner in place of the original papers, or such as have been translated. Upon the return of the commission and deposition such judge shall in like manner cause the same to be translated into English, and all other proceedings; such transaction shall be filed. The translator shall append his affidavit to the translation, stating that he knows both languages and that he truly translated and that it is correct; the same effect shall be had as if all the proceedings were in English, but the trial court, upon the deposition being offered in evidence, may admit the testimony of witnesses learned in such foreign language for the

correction of errors, and if it shall appear that the first translation was in any respect so incorrect as to mislead the witness, the court may in discretion continue the cause for the further taking of testimony. Subpoena may issue compelling attendance of witnesses in this or other states. FEES—witness, per day, \$1.50; half day, 75c; copying papers, 10c per folio; travel, 4c per mile each way in the state; justice taking 12c per folio. Each party to pay his commissioner and witnesses.

§ 401. Wyoming—IN THIS STATE—may be taken before a judge or clerk of the supreme or district court, a justice of the peace, notary public, mayor or chief magistrate of a municipal corporation, or any other person authorized to administer oaths, or any person empowered by a special commission. OUT OF THE STATE—may be taken before a judge, justice or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any municipal corporation, a commissioner appointed by the governor of this state to take depositions, or any other person authorized to administer oaths, or any person authorized by a special commission from this state; provided, that when a deposition is taken by an officer not having a seal, his jurat shall be accompanied by a certificate of the clerk of the county in which same is taken, setting forth the fact that the officer is such officer, and that his signature is genuine. Either party may commence taking testimony by deposition after service upon the defendant. Officer taking must not be a relative or interested in the action. Any court of record of the state, or a judge, may grant a commission to take depositions within or without the state, to be issued by the clerk under the seal of the court. The persons to whom issued must be named therein, and deposition must be taken on written interrogatories unless parties otherwise agree. Written notice to be given the adverse party, unless taken under special commission, must specify the action, name of the court where it is to be used, the time and place of taking, and in case the deposition of a party to the suit be taken, it shall not be used in his own behalf, unless the notice so specifies; it shall be served upon the adverse party, his agent or attorney of record, or left at their usual abode; it shall only be used against such parties as are so served. Sufficient time, exclusive of Sundays, day of service, and one day of preparation, and time for travel, shall be allowed. May be adjourned from day to day if so stated in the notice. Notice by publication may be given when adverse party is a nonresident, and has no agent or attorney of record in the state; the publication must be for three consecutive weeks in a newspaper published in the county; if no newspaper there, then in one published in the state circulating generally in the county; proved by affidavit; deposition to be written in the presence of the officer, by him or the witness or some disinterested person, and subscribed to by the witness. Officers' certificate to show that the witness was sworn to testify the truth, the whole truth and nothing but the truth; that the deposition was reduced to writing by some proper person, and subscribed to in his presence; that it was taken at the time and place specified in the notice. It shall be sealed in an envelope

indorsed with the title of the cause, the name of the officer taking; he shall address and transmit it to the clerk of the court of the action, there to remain unopened subject to the court's orders, or the request of the party to the action, or his attorney. It must be filed in court at least one day before trial. If taken out of this state by an authorized officer, it may be taken in this form or in the form authorized where taken; in the latter case the certificate shall be deemed prima facie, as made in accordance with the laws of the place where made when it so certifies. Subpœna for witness shall be issued by the officer. A witness shall not be compelled to go out of his county. Depositions may be used only when the witness does not reside in or is absent from the county where the action is pending; when dead, aged, infirm or imprisoned; when the testimony is required upon a motion, or the oral examination is not required. It may be read in any stage of the action, or in any other action upon the same matter, between the parties. A deposition taken by an authorized officer having a seal of office shall be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal, and no other act of authentication is required. If he has no official seal, and is not taken in this state, it shall be certified and signed by the officer and further authenticated, either by parol proof in court or by the certificate and seal of the secretary or other officer of the state who is the custodian of the great seal of the state, or the certificate and seal of the clerk or prothonotary of any court of the state where taken, attesting that such officer was at the time of taking authorized to take. If taken in this state by an officer not having a seal, or within or without this state under a special commission, the official signature of the officer or commissioner is sufficient, and when not certified according to law, the fact neglected may be shown by parol proof. FEES—15c per folio and \$5 for all other services.

§ 402. **Canada**—Of witnesses outside of the province may be taken by commission upon interrogatories in discretion of court. Open commission can issue by consent of parties.

CHAPTER V.

NEGOTIABLE INSTRUMENTS.

§ 403. Definition and Nature of Negotiable Instruments; Parties.

§ 404. —**Negotiable Paper in General.**—A negotiable instrument is any written instrument which may be transferred by indorsement and delivery, or by delivery alone, so as to give the indorsee the legal title and enable him to sue in his own name. In a narrower sense it indicates those instruments the indorsee of which, under the law merchant, takes free of certain equities and defenses between the original parties.¹

The term “negotiable” indicates that certain instruments, so described, are given by law a property by virtue of which they may be transferred by the payee therein, and his transferees successively, to vest in each succeeding transferee the title thereto, unaffected by certain defenses to which they might have been subjected in the hands of the immediate or any transferer, and to which non-negotiable paper would be subject notwithstanding such transfer; provided the transfer is made according to the rules established to govern commercial paper.²

§ 405. —**Promissory Notes.**—“A negotiable promissory note * * * is an unconditional promise in writing, made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money, to order or to bearer. When a note is drawn to the maker’s own order, it is not complete until indorsed by him.”³ A promissory note must contain on its face an ex-

¹ Cyc. Law Dict.

² Bays’ Commercial Law, vol. 2, p. 21.

Non-negotiable paper is payable only to the payee, and mentions no “order” or bearer.

³ Uniform Negotiable Instruments Law, § 184, post, p. 314.

The parties to a promissory note are: The maker, who makes it; the drawee, to whom it is payable; the indorser, who writes his name on its back.

press promise to pay money. An instrument reading: "I. O. U. the sum of \$17.00 for value received," signed by the maker, is not a promissory note.⁴

§ 406. —Certificates of Deposit.—A certificate of deposit is an instrument issued by a bank reciting a deposit of a certain sum of money, payable on demand, or at a fixed time. It is negotiable, if drawn properly, being a form of promissory note.⁵

§ 407. —Bills of Exchange.—"A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money, to order or to bearer."⁶ The law recognizes as bills of exchange only instruments of writing for the payment of money.⁷ The parties are the drawer, who makes the bill; the payee, to whom it is to be paid; the drawee, to whom it is directed; when the latter accepts it by writing his name across its face, he is the acceptor. When the payee writes his name on its back, he is the indorser. Persons subsequently writing their names upon its back likewise become indorsers. Bills are either inland or foreign. An inland bill is a bill drawn and payable within the same country; all others are foreign bills.⁸ If drawn in Wisconsin, but dated in Illinois, and is between citizens of Illinois, it is an inland bill.⁹

Is a written engagement by one person to pay absolutely and unconditionally to another person therein named, or to his order, or to the bearer, a certain sum of money at a specified time, or on demand, or at sight. *Hall v. Farmer*, 5 Denio (N. Y.) 484, aff'd 2 N. Y. 553; see also *Coolidge v. Ruggles*, 15 Mass. 387; *Klauber v. Biggerstaff*, 47 Wis. 551, 3 N. W. 357, 32 Am. Rep. 773.

⁴*Gay v. Rooke*, 151 Mass. 115, 23 N. E. 835, 7 L. R. A. 392, 21 Am. St. Rep. 434.

⁵*Bays' Commercial Law*, vol. 2, p. 32.

⁶Uniform Negotiable Instruments Law, §§ 126-131, post, p. 307.

⁷*Bradley v. Morris*, 4 Ill. (3 Scam.) 182.

⁸*Bays' Commercial Law*, vol. 2, p. 28.

The states of the Union are foreign to each other within the meaning of this article. *Mason v. Dousay*, 35 Ill. 424, 85 Am. Dec. 368; *Freeman's Bank v. Perkins*, 18 Me. 292; *Dickins v. Beal*, 10 Pet. (U. S.) 572, 9 L. Ed. 538.

⁹*Strawbridge v. Robinson*, 10 Ill. (5 Gilm.) 470, 50 Am. Dec. 420.

§ 408. —Checks.—"A check is a bill of exchange drawn on a bank, payable on demand."¹⁰ It is not a check if drawn payable in the future, but a true bill of exchange. Its parties are the drawer, who makes it; the payee, the one to be paid; the drawee, the bank on which it is drawn. When the payee writes his name on its back, he is the indorser. A check differs from a bill of exchange in that it is not due until presented, and consequently may be negotiated before presentment, in that the drawer of a check is not discharged for want of immediate presentment with due diligence; in that the death of the drawer rescinds the authority of the banker to pay it, while the death of a drawer of a bill of exchange does not alter the relations of the parties; and in the fact that checks are always payable without grace.¹¹ Checks should always be presented to the bank without delay, as either the drawer or bank might fail, the drawer might die, or check out his balance at the bank.

A certified check is a check which has been recognized by the proper officer as a valid appropriation of the amount of money therein specified to the person therein named, and which bears upon itself the evidence of such recognition. Certification is usually accomplished by writing the name of the officer authorized to bind the bank in that manner across the face of the check.¹² An architect's certificate notifying the owner of a building that a certain sum was due the contractors, which was indorsed by the owner in the form of an order to his banker, is a check and not a bill of exchange.¹³

A check imports a payment, not a loan.¹⁴ When a check is sent to some other place than where the bank is located upon which it is drawn, and it is put into a bank for collec-

¹⁰ Uniform Negotiable Instruments Law, §§ 185-189, post, p. 314.

A check is a written order or request, addressed to a bank or persons carrying on the business of banking, by a party having money in their hands, on deposit, desiring them to pay on presentment, to a person named therein, or bearer, or to such person, or

order, a named sum of money. Cyc. Law Dict.

¹¹ Cyc. Law Dict.

¹² Cyc. Law Dict.

¹³ Industrial Bank v. Bowes, 165 Ill. 70, 46 N. E. 10, 56 Am. St. Rep. 228.

¹⁴ Bernard v. Fee's Estate, 129 Mich. 429, 88 N. W. 1052, citing Downey v. Andrus, 43 Mich. 65, 4 N. W. 628.

tion, it is the duty of the bank to forward it, in proper time, to a subagent, selected with due care. The bank upon which it is drawn is not a suitable agent for its collection.¹⁵

§ 409. —**Drafts.**—"Draft" is the common term for a bill of exchange.¹⁶ A bank draft is a bill of exchange payable on demand, drawn by one banker or bank upon another banker or bank to the order of a person therein named. It is negotiable as usually drawn.¹⁷

§ 410. —**Days of Grace.**—Negotiable instruments differ from other simple contracts in the respect of their transferability as already indicated, in the fact that a consideration will be presumed unless the contrary is shown, and in the fact that three days of grace were allowed by the common law, meaning that the instrument could not be sued on until three days had elapsed after the date named in the instrument for its maturity.¹⁸ Because of rapid transit, and telegraph and telephone communication, days of grace have been abolished in almost all states. The Uniform Negotiable Instruments Act, adopted in most states, expressly abolishes days of grace.¹⁹ The law of the place of payment must govern as to whether days of grace are allowed on commercial paper.²⁰

§ 411. **Legal Holidays.**—If a bill falls due on a Sunday or legal holiday, if entitled to grace, it is deemed to be due on the preceding day; if not entitled to grace, it is deemed to be due on the succeeding day. The computation of time is determined by the law of the place of payment, if shown. In reckoning the twenty-four hours, nonbusiness days must be excluded.²¹

¹⁵ *Carson, Pirie, Scott & Co. v. Fincher*, 129 Mich. 687, 89 N. W. 570, 95 Am. St. Rep. 449.

¹⁶ *Cyc. Law Dict.*

¹⁷ *Bays' Commercial Law*, vol. 2, p. 33.

¹⁸ *Bays' Commercial Law*, vol. 2, p. 25.

It is premature to bring an action on a promissory note on the last day of grace. *Wiesinger v. First Nat. Bank*, 106 Mich. 291, 64 N. W. 59; *Bowen v. Newell*, 8 N.

Y. 190; *id.*, 13 N. Y. 290, 64 Am. Dec. 550.

Note: Days of grace originated in the distance of travel consuming delay in presentation.—Ed.

¹⁹ Uniform Negotiable Instruments Law, § 85, post, p. 302.

²⁰ *Skelton v. Dustin*, 92 Ill. 49.

²¹ *Avery v. Stewart*, 2 Conn. 69, 7 Am. Dec. 240; *City Bank v. Cutter*, 3 Pick. (Mass.) 414; *Salter v. Burt*, 20 Wend. (N. Y.) 205, 32 Am. Dec. 530.

CONTRACTS OF PARTIES; LIABILITIES.

§ 412. **Maker of Note.**—The maker's contract is to pay the note according to its tenor, to the payee or his transferee. He cannot deny the payee's existence or his then capacity to indorse. His liability is primary.²² A blank indorsement on a note above or below that of the payee renders the indorser liable *prima facie* as maker.²³ A promissory note signed by the maker through fear of violence, snatched and carried away against his will, is not validly delivered.²⁴

§ 413. **Drawer of Bill.**—The drawer's contract is that if the bill be not accepted or paid, according to its tenor, to the payee therein, or his transferee, he, the drawer, will pay it, provided the necessary steps are taken to charge him. He cannot deny the payee's existence or his then capacity to indorse. His liability is secondary. He may by apt words negative his liability.²⁵

§ 414. **Drawee of Bill or Check.**—A person, firm or corporation upon whom a bill or check is drawn cannot be made liable thereon unless there is an acceptance. But to the drawer there may be a liability for failure to accept or failure to pay, if such failure amounts to a breach of contract.²⁶

§ 415. **Acceptor.**—The acceptor of a bill of exchange contracts to pay it according to the tenor of his acceptance. He cannot deny the existence of the drawer or payee, or the capacity of the first to draw, the second to indorse the instrument, or the genuineness of the drawer's signature. His liability is primary.²⁷ The acceptor of a bill of exchange who dishonors it is liable for (1) the amount of the bill with interest (a) from the maturity thereof if the bill be payable on a day certain, or (b) from the time of presentment for payment if the bill be payable on demand; (2) as special

²² Bays' Commercial Law, vol. 2, p. 108.

²³ National Bank of Bellows Falls v. Dorset Marble Co., 61 Vt. 106, 17 Atl. 42, 2 L. R. A. 428.

²⁴ Palmer v. Poor, 121 Ind. 135, 22 N. E. 984, 6 L. R. A. 469.

²⁵ Bays' Commercial Law, vol. 2, p. 108.

²⁶ Bays' Commercial Law, vol. 2, p. 109.

²⁷ Bays' Commercial Law, vol. 2, p. 109.

damage, the notarial expenses consequent on dishonor, and (perhaps) the loss on re-exchange incurred by an indorser who has taken up or paid the bill.²⁸

§ 416. **Indorsers.**—An unqualified indorser warrants the capacity of the prior parties, the genuineness of the instrument, the genuineness of his title thereto, that the instrument will not be dishonored by nonacceptance or nonpayment, and undertakes that if for any of these reasons or otherwise the instrument is unpaid at maturity, he will pay the amount thereof to the holder, provided proper steps are taken to charge him. His liability is secondary.²⁹

A qualified indorser, or one who negotiates an instrument by mere delivery, i. e., without indorsement, warrants to his immediate transferee, and him only, the capacity of the prior parties, the genuineness of the instrument, the genuineness of his own title, and that he knows of nothing impairing the validity of the instrument.³⁰ The indorser of an accommodation note is responsible for the payment, when taken in good faith for value by a bank.³¹

“As respects one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise.”³² In the absence of special agreement, successive indorsers on an accommodation note of a third person are liable in the same order as indorsers for value.³³

A corporation is liable as indorser on commercial paper where notices of protest are addressed to it in its corporate name.³⁴ A note presented to the drawer when due, by the agent of the holder, is sufficient to hold the indorser.³⁵ An indorser on a note in the firm's name, subsequently dissolved,

²⁸ *Ilsey v. Jones*, 12 Gray (Mass.) 260.

²⁹ *Bays' Commercial Law*, vol. 2, p. 110.

³⁰ *Bays' Commercial Law*, vol. 2, pp. 111, 112.

³¹ *Agawam Nat. Bank v. Downing*, 169 Mass. 297, 47 N. E. 1016.

³² *Uniform Negotiable Instruments Law*, § 68, post, p. 301.

³³ *Moore v. Cushing*, 162 Mass. 594, 39 N. E. 177, 44 Am. St. Rep. 393; *Shaw v. Knox*, 98 Mass. 214.

³⁴ *American Nat. Bank v. Junk Bros. Lumber & Mfg. Co.*, 94 Tenn. 624, 30 S. W. 753, 28 L. R. A. 492.

³⁵ *Ewen v. Wilbor*, 99 Ill. App. 132, aff'd 208 Ill. 492, 70 N. E. 575.

cannot deny the existence of the firm in order to save himself from liability. A dissolution of partnership has respect to the future only. The parties remain bound for all antecedent engagements.³⁶

§ 417. Damages.—The drawer or indorser of a dishonored bill is liable for damages at the following rates: (1) Inland bill—the amount of the bill with interest from (probably) the time of dishonor. (2) Foreign bill of exchange—the amount of the bill with interest from the time of dishonor, and the notarial expenses, or, if it be payable abroad, the re-exchange, interest and expenses. Re-exchange means the loss resulting from the dishonor of a bill of exchange in a country different from that in which it was drawn or indorsed.³⁷

DUTIES AND LIABILITIES OF NOTARIES.

§ 418. Notary's Duties Concerning Negotiable Instruments.—At the common law, formal protest and notice by a notary public were only necessary upon foreign bills and notes, and not on inland. Accordingly at the common law, and in the absence of statute, when a notary gives notice and makes the protest, he acts as the holder's agent and not officially.³⁸ This has been changed by statute in a large number of states so that the act is official.³⁹ The distinction is of importance in determining the liability of a person such as a holder of a negotiable instrument who employs a notary public to make presentment, give notice of dishonor and protest such an instrument. It is a general rule of agency that a principal is

³⁶ Hubbard v. Matthews, 54 N. Y. 43, 13 Am. Rep. 562.

³⁷ Cyc. Law Dict.

³⁸ Tevis v. Randall, 6 Cal. 632, 65 Am. Dec. 547; Williams v. Parks, 63 Neb. 747, 89 N. W. 395, 56 L. R. A. 759.

The giving of notice of dishonor is not part of the notary's duties, he being a mere agent of the holder. First Nat. Bank v. German Bank, 107 Iowa 543, 78 N. W.

195, 44 L. R. A. 133, 70 Am. St. Rep. 216.

At the common law, protest was not evidence of dishonor, but it has been made so by statute. Rives v. Parmley, 18 Ala. 256.

³⁹ Williams v. Parks, 63 Neb. 747, 89 N. W. 395, 56 L. R. A. 759.

Where notaries are expressly authorized by statute to give notice, it is an official duty. Williams v. Parks, 63 Neb. 747, 89 N. W. 395, 56 L. R. A. 759.

responsible to third persons who are damaged by torts committed by the agent within the scope of his authority.⁴⁰ Accordingly, pursuant to this rule, such a principal will be liable for negligence or mistake of a notary employed by him to perform such duties.

Apart from the liabilities of third persons who employ notaries to perform duties with reference to negotiable instruments is the liability of the notary himself. In order to properly perform his duties, a notary must have some knowledge of the law of commercial paper—the more the better. Grave complications are constantly arising from ignorance or neglect on the part of notaries, resulting in serious loss and damage either to the notary himself, his bondsmen or his principal.⁴¹ A notary who receives paper to protest owes the proper performance of his duty to the principal who requested the act, and to all others affected by such acts.⁴² The holder of the note is entitled to rely on the diligence of the notary.⁴³

Where promissory notes are made protestable securities by statute, such protest must be attended with all the incidents belonging to foreign bills of exchange.⁴⁴

§ 419. Liabilities of Notaries.—The failure of a notary, selected as a public officer, to discharge his duty is a breach of his bond, and renders him and his bondsmen liable for damages or loss sustained by the party who sought the notary's services.⁴⁵ There is no right of action against a notary

⁴⁰ Bays' Commercial Law, vol. 4, p. 77.

⁴¹ Post, § 419, Liabilities of Notaries.

⁴² Ohio Nat. Bank v. Hopkins, 8 App. Cas. (D. C.) 146; supported by Britton v. Niccolls, 104 U. S. 757, 26 L. Ed. 917.

Notary receiving paper to protest is agent of owner of paper, and his paramount duty is to him. Ohio Nat. Bank v. Hopkins, 8 App. Cas. (D. C.) 146.

⁴³ Second Nat. Bank v. Smith, 91 N. J. L. 531, 103 Atl. 862, 1 A. L. R. 470.

⁴⁴ Tevis v. Randall, 6 Cal. 632, 65 Am. Dec. 547.

⁴⁵ Williams v. Parks, 63 Neb. 747, 89 N. W. 395, 56 L. R. A. 759; Wheeler v. State, 9 Heisk. (Tenn.) 393, citing Morgan v. Van Ingen, 2 Johns. (N. Y.) 204; Nicholls v. Webb, 8 Wheat. (U. S.) 326, 5 L. Ed. 628.

A notary is liable for loss occasioned for his failure to make protest when it is required. He is liable when he neglects to give proper notice to all parties entitled to notice of dishonor. His position is the same as an agent

who is ordered to protest a bill on a wrong day, as the notary is not presumed to be a lawyer who is to revise or reverse the decisions of his employer as to the nature of the bill,⁴⁶ and if no loss is sustained by reason of a notary's defective protest, no damages can be claimed against him.⁴⁷

§ 420. Liability of Bank Employing Notary Public.—A bank acting as collecting agent for its correspondent, in employing a notary in his official capacity, is bound to place the paper in the hands of a competent and careful notary and pay him for his services the legal fee, charging the same to their correspondent.⁴⁸ A disputed question exists as to the liability of a bank which employs a notary to give notices and protest, arising from the conflict of opinion as to whether such notary is a mere agent, or a public official. The prevailing rule is that the bank is not liable, in cases of negligence or mistake on the part of the notary, if it uses diligence in selecting the official.⁴⁹ A large number of courts hold, however, that the bank is liable, the notary being regarded as a mere agent.⁵⁰

in any other line. He can be held liable for mistakes, negligence and due diligence. He is liable for negligence in presenting or protesting negotiable papers. *First Nat. Bank v. German Bank*, 107 Iowa 543, 78 N. W. 195, 44 L. R. A. 733, 70 Am. St. Rep. 216; *Dorchester & Milton Bank v. New England Bank*, 1 Cush. (55 Mass.) 177; *Warren Bank v. Parker*, 8 Gray (Mass.) 221; *Bowling v. Arthur*, 34 Miss. 41; *Allen v. Suydam*, 20 Wend. (N. Y.) 321, 32 Am. Dec. 555; *Exchange Nat. Bank v. Third Nat. Bank of New York*, 112 U. S. 276, 28 L. Ed. 722, 5 Sup. Ct. 141.

⁴⁶ *Commercial Bank v. Varnum*, 49 N. Y. 269.

⁴⁷ *Franklin v. Smith*, 21 Wend. (N. Y.) 624.

⁴⁸ *Pierce v. Indseth*, 106 U. S. 546, 27 L. Ed. 254, 1 Sup. Ct. 418.

⁴⁹ *First Nat. Bank v. German*

Bank, 107 Iowa 543, 78 N. W. 195, 44 L. R. A. 133, 70 Am. St. Rep. 216; *Williams v. Parks*, 63 Neb. 747, 89 N. W. 395, 56 L. R. A. 759; *First Nat. Bank v. Butler*, 41 Ohio St. 519, 52 Am. Rep. 94. See *Britton v. Niccolls*, 104 U. S. 757, 26 L. Ed. 917.

A bank receiving commercial paper for collection, by placing it in the hands of a notary public for protest, is not liable for failure of the notary to perform his duty under the code of Mississippi. The liability rests upon the notary and his sureties. *Tiernan v. Commercial Bank of Natchez*, 7 How. (Miss.) 648, 40 Am. Dec. 83; *Bowling v. Arthur*, 34 Miss. 41.

⁵⁰ *Davey v. Jones*, 42 N. J. L. 28, 36 Am. Rep. 505. See *Brill v. Jefferson Bank*, 159 N. Y. App. Div. 461, 144 N. Y. Supp. 539. *Henderson v. Smith*, 26 W. Va. 829, 53 Am. Rep. 139.

In one case, in a state where the notary is regarded as an official rather than an agent, a bank was held liable, but the notary in question was an officer of the bank also.⁵¹

PRESENTMENT OF BILL FOR ACCEPTANCE.

§ 421. Definition of Acceptance.—An acceptance of a bill of exchange is an engagement to pay the bill in money when due. Such acceptances may be absolute, when a positive engagement is made to pay the bill according to its tenor; conditional, when an undertaking is made to pay the bill on a contingency; partial, when the acceptance varies from the tenor of the bill; qualified, when the acceptance is either conditional or partial; and *supra* protest, when the acceptance is after protest for nonacceptance by the drawee, for the honor of the drawer, or a particular indorser. Acceptance may also be express or implied.⁵²

§ 422. Necessity of Presentment for Acceptance.—Presentment for acceptance is necessary in certain cases to charge the drawer and indorsers, as where the bill is payable after sight, or in any other case where such presentment is necessary in order to fix the maturity of the instrument; or where the bill expressly stipulates that it shall be presented for acceptance; or where the bill is drawn elsewhere than at the residence or place of business of the drawee.⁵³ In other cases presentment for payment at maturity is sufficient. When not required, presentment for acceptance may be made for the purpose of obtaining as soon as possible the liability of the drawee as an

⁵¹ *Wood River Bank v. First Nat. Bank*, 36 Neb. 744, 55 N. W. 239.

⁵² *Cyc. Law Dict.*

⁵³ *Uniform Negotiable Instruments Law*, §§ 143-151, post, p. 309. See also *Allen v. Suydam*, 20 Wend. (N. Y.) 321, 32 Am. Dec. 555; *Walker v. Stetson*, 19 Ohio St. 400, 2 Am. Rep. 405.

The holder of a bill of exchange, payable at or after sight, is bound either to negotiate it away or to

present it for acceptance within a reasonable time. If he omits to do so, the drawer and prior indorsers are discharged. If payable otherwise, it may be presented at any time before maturity. *Strong & Wiley Bros. v. King*, 35 Ill. 9, 9 Am. Dec. 336; *Pryor v. Bowman*, 38 Iowa 92; *Walsh v. Dart*, 23 Wis. 324, 99 Am. Dec. 177; *Wallace v. Agry*, 4 Mason (U. S.) 336, Fed. Cas. No. 17096.

acceptor, and to give, in case of nonacceptance, a right of immediate recourse against the drawee and the indorsers.⁵⁴

§ 423. Sufficiency of Presentment for Acceptance.—In order to charge the parties secondarily liable, presentment of a bill for acceptance must be made by or on behalf of the holder; within a reasonable time (or negotiated within a reasonable time) on a business day before the instrument is overdue; at a reasonable hour; and to the drawee, his agent in that behalf, or his personal representative.⁵⁵

The party who must make presentment must be the holder of the bill, or some one who acts in his behalf.⁵⁶ Any person in possession of a bill of exchange may present it for acceptance.⁵⁷

There is no exact date on which presentment must be made, but it must be made before the instrument is overdue, on a business day. Such day must fall within a reasonable time from the time the instrument is delivered to the payee, or within a reasonable time from the last transfer.⁵⁸ The holder must use due diligence,⁵⁹ and delay of more than a year in the proper presentation of a draft agreed to be accepted is unreasonable.⁶⁰

The hour of presentment must be reasonable, or if acceptance is by or at a bank, during banking hours. What is a reasonable hour depends on the particular customs of the community. What might be a reasonable hour in a rural district might not be such in a large city.⁶¹

Presentment must be made to the drawee personally, or to some person who has authority to accept or refuse acceptance on his behalf.⁶² If there are several drawees, acceptance must be made to all, except where one or more are agents for the others in that behalf or are partners.

⁵⁴ Bays' Commercial Law, vol. 2, p. 122.

⁵⁵ Bays' Commercial Law, vol. 2, p. 123.

⁵⁶ Bays' Commercial Law, vol. 2, p. 123.

⁵⁷ Freeman v. Boynton, 7 Mass. 483.

⁵⁸ Bays' Commercial Law, vol. 2, p. 123.

⁵⁹ Baer v. Lichten, 24 Ill. App. 311.

⁶⁰ First Nat. Bank of Lacon v. Bensley, 2 Fed. 609.

⁶¹ Bays' Commercial Law, vol. 2, pp. 119, 124.

⁶² Bays' Commercial Law, vol. 2, p. 124; Sharpe v. Drew, 9 Ind. 281.

§ 424. Manner of Acceptance.—An acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.⁶³ If the holder demands it, acceptance must be on the face of the bill; otherwise he may treat the bill as dishonored. But a bill may be accepted by a separate paper, in which case it will be binding only in favor of one who received the bill for value.⁶⁴ An absolute promise to accept a bill thereafter to be drawn will operate as an acceptance in favor of any one who on the faith thereof received the bill for value.⁶⁵ A letter written within a reasonable time, describing a bill of exchange and promising to accept it, is, if shown to the person who afterwards takes it on the strength

⁶³ Bays' Commercial Law, vol. 2, p. 73.

An oral acceptance was binding in Illinois before the Negotiable Instruments Act took effect. *Edward Hines Lumber Co. v. Anderson*, 141 Ill. App. 527; *Scudder v. Union Nat. Bank of Chicago*, 91 U. S. 406, 23 L. Ed. 245.

⁶⁴ Bays' Commercial Law, vol. 2, p. 74.

An acceptance may be: First—In writing on the bill, or on a separate paper. Second—Oral, implied from acts of the drawer. Third—A written or verbal promise to accept, either before or after the existence of the bill. Time—Such promise must be made within a reasonable time before or after the issue of the bill. It must specify the bill to be drawn so as to distinguish it from any other. Promise—It must be taken by the holder on the faith of such promise. *Coffman v. D. C. Campbell & Co.*, 87 Ill. 98; *Sturges v. Fourth Nat. Bank of*

Chicago, 75 Ill. 595; *Nelson v. First Nat. Bank of Chicago*, 48 Ill. 36, 95 Am. Dec. 510; *First Nat. Bank of Chicago v. Pettit*, 41 Ill. 492; *Jones v. State Bank of Iowa*, 34 Ill. 313; *Scudder v. Union Nat. Bank of Chicago*, 91 U. S. 406, 23 L. Ed. 245.

Acceptance is usually indicated by writing across the face of the bill the word "Accepted," adding the date and party's signature. A promise in writing to accept a bill of exchange will not, in law, amount to acceptance, unless the bill was taken on the strength of the letter. *Kennedy v. Geddes & Co.*, 8 Port. (Ala.) 263, 33 Am. Dec. 289; *Mayhew v. Prince*, 11 Mass. 54; *Goodrich v. Gordon*, 15 Johns. (N. Y.) 6; *McEvers v. Mason, Hodgson & Co.*, 10 Johns. (N. Y.) 207; *Parker v. Greele*, 2 Wend. (N. Y.) 545, aff'd 5 Wend. (N. Y.) 414.

⁶⁵ Bays' Commercial Law, vol. 2, p. 74.

of the letter, a virtual acceptance, binding the person making the promise.⁶⁶

§ 425. Presumption of Acceptance from Retention of Bill.—The Uniform Negotiable Instruments Act provides that where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted, or nonaccepted to the holder, he will be deemed to have accepted the same.⁶⁷ The drawee has the right to a reasonable time, usually twenty-four hours, to ascertain the state of his accounts between himself and the drawer. After the expiration of such time, the holder has the right to know the drawee's attitude. The consensus of authority is, however, that the duty rests on the holder to demand either acceptance or return of the bill, and that mere inaction on the part of the drawee has no effect.⁶⁸

PRESENTMENT FOR PAYMENT.

§ 426. Necessity of Presentment for Payment at Maturity.—Presentment of a note to the maker thereof, or of an accepted bill to the acceptor thereof, at its maturity, is not necessary to fix the liability of such maker or acceptor. But if a place of payment is provided in the instrument, and the party liable thereon has funds there at maturity to pay it, but no presentment is there and then made, that will bar further interest and costs, and the right to have the instrument paid at such place. As to the parties secondarily liable, presentment for payment at maturity is necessary to charge them, except where excused or waived.⁶⁹ The parties secondarily liable are not discharged, notwithstanding lack of presentment, when the circumstances excuse such presentment. Ac-

⁶⁶ Kennedy v. Geddes & Co., 8 Port. (Ala.) 263, 33 Am. Dec. 289; Coolidge v. Payson, 2 Wheat. (U. S.) 66, 4 L. Ed. 185.

⁶⁷ Uniform Negotiable Instruments Law, § 137, post, p. 308.

Note: Illinois has omitted this section in enacting the Act. Wisconsin has added that "mere re-

tention of the bill is not acceptance."—Ed.

⁶⁸ Bays' Commercial Law, vol. 2, p. 75, citing Westberg v. Chicago Lumber & Coal Co., 117 Wis. 589, 94 N. W. 572.

⁶⁹ Bays' Commercial Law, vol. 2, pp. 115, 116.

cordingly presentment is not required where the drawer has no right to expect or require the drawee or acceptor to pay, where an instrument is made or accepted to accommodate an indorser, where after the exercise of reasonable diligence it cannot be made, where the drawee is a fictitious person, or where the parties entitled to presentment waive it by word or conduct.⁷⁰

§ 427. Sufficiency of Presentment.

§ 428. —By Whom Presentment Must Be Made.—Presentment for payment must be made by the holder of the instrument, or his agent in that behalf. Possession of a negotiable instrument payable to bearer, or properly indorsed, shows prima facie authority to receive payment. If the holder is dead, his personal representative should make presentment.⁷¹

§ 429. —Time.—The date of presentment is the date of maturity of the instrument. Paper matures without grace on the date specified for payment, as days of grace, which were allowed at the common law, have been abolished in most states.⁷² Demand paper must be presented within a reasonable time to charge the drawer or indorsers.⁷³ And where no time is specified, the law implies that it must be presented within a reasonable time. More than a year is unreasonable.⁷⁴ What constitutes reasonable time depends on the facts in each particular case, and must be judged accordingly.⁷⁵ A reasonable time for presentment for payment of a check, where all the parties reside in the same city, would be until the close of banking hours of the next day after the giving of the check.⁷⁶

⁷⁰ Bays' Commercial Law, vol. 2, pp. 120, 121.

⁷¹ Bays' Commercial Law, vol. 2, p. 117.

⁷² Bays' Commercial Law, vol. 2, p. 118.

In the absence of statutory provision to the contrary, a bill presented for payment on the last day of grace is presented in proper time. Reese v. Mitchell, 41 Ill. 365; Elston v. Dewes, 28 Ill. 436; Cook v. Renick, 19 Ill. 598.

⁷³ Bays' Commercial Law, vol. 2, p. 118.

⁷⁴ First Nat. Bank of Lacon v. Bensley, 2 Fed. 609.

⁷⁵ Montelius v. Charles, 76 Ill. 303.

⁷⁶ Brown v. Schintz, 98 Ill. App. 452, citing Gage Hotel Co. v. Union Nat. Bank, 171 Ill. 531, 49 N. E. 420, 39 L. R. A. 479, 63 Am. St. Rep. 270; Bickford v. First Nat. Bank of Chicago, 42 Ill. 238, 89 Am. Dec. 436; Munn v. Burch, 25 Ill. 35.

The holder's neglect to present for payment at maturity, only affects his remedy against the drawer in case of the latter's insolvency occurring in the meantime, or some event to the prejudice of the drawer.⁷⁷ A note payable Feb. 1, 1839, presented at bank and protested June 9, 1842, did not discharge the maker in the absence of proof that he had funds there at the appointed day, nor that he has sustained any loss or injury by the delay in presentment.⁷⁸

The hour of presentment must be a reasonable hour, or if payable at a bank, during banking hours, unless the party liable has no funds there, in which case presentment before the bank is closed is sufficient.⁷⁹ When not presented at a bank it may be presented any hour before bedtime.⁸⁰ A note presented during business hours, at the place of payment, and payment demanded, which the maker refused, the protesting being made on the same day was not premature.⁸¹

The notary's protest is competent evidence of its nonpayment. The law of the place where the bill is payable governs as to time of presentment and payment.⁸²

§ 430. —Excuses for Delay.—An impossibility in presenting for payment is about the only excuse admissible. The inquiry will always be whether, under the circumstances, due diligence has been used. These circumstances must be stated in the certificate, that the court and jury may see whether there has been due diligence. There must appear some fact to excuse demand, as that the maker could not be found at his last place of business, or that he had absconded, left the state, his place of residence deserted, or that the indorser, and others likely to know, had been inquired of and could not tell, or some other fact as recognized in the books. The liability of the indorser depends upon the diligence of the holder in demanding payment of the maker. The question of diligence

⁷⁷ Springfield Marine & Fire Ins. Co. v. Tinscher, 30 Ill. 399.

⁷⁸ Bradford v. Cooper, 1 La. Ann. 325; Wallace v. McConnell, 13 Pet. (U. S.) 136, 10 L. Ed. 95.

⁷⁹ Bays' Commercial Law, vol. 2, p. 119.

⁸⁰ Skelton v. Dustin, 92 Ill. 49.

⁸¹ Guignon v. Union Trust Co., 53 Ill. App. 581, aff'd 156 Ill. 135, 40 N. E. 556, 47 Am. St. Rep. 186.

⁸² Wooley v. Lyon, 117 Ill. 244, 6 N. E. 885, 57 Am. Rep. 867; Pierce v. Indseth, 106 U. S. 546, 27 L. Ed. 254, 1 Sup. Ct. 418.

is one of law and fact, to be determined by the court and jury and not to be certified by the notary.⁸³

§ 431. —**Place of Presentment.**—If there is a place of presentment specified, of course that governs, but if no place is specified, the instrument must be presented at the address given, or, if none, at the usual place of business or residence, or in any other case where the party can be found, or at his last known place of residence.⁸⁴ It has been held that if, after the making and indorsement of the note, the maker absconds or moves out of the state, the holder is not bound to follow him to make the demand.⁸⁵ If demand at the place designated in the contract became impossible, as if the bank had ceased to exist, then demand at the place is excused. It is the existence, or nonexistence of the bank, as a place of payment, that excuses the want of demand at that place, and not the state of its assets, nor their location, nor the amount or character of its business. When a particular place of payment is agreed upon, and the demand is not excused or made at such place, no personal demand of the maker can in any way fix a liability on the indorser of the paper sued upon. If a drawer of a note or acceptor of a bill, having a regular place of business, is absent from it, or has absconded before the day of payment, or if his house be closed, notice of such fact is equivalent to notice of the demand and dishonor of the paper.⁸⁶ Where the maker and indorser of a bill of exchange reside in one state and the payment is to be made in another state, the parties elect to make the bill foreign and protest must be made where it is payable.⁸⁷

§ 432. —**To Whom Presented.**—Presentment must be made to the person himself, or to his agent, or if he is absent or in-

⁸³ Cockrill v. Loewenstine & Bro., 9 Heisk. (Tenn.) 206.

⁸⁴ Bays' Commercial Law, vol. 2, p. 119.

If not indicated on the instrument where it is payable, then it should be presented at the party's place of business during his business hours. If they have no place of business, then at the dwelling,

or wherever they can be found. No formal demand is necessary where the bill is payable at a bank. Wing v. Beach, 31 Ill. App. 78.

⁸⁵ Anderson v. Drake, 14 Johns. (N. Y.) 114.

⁸⁶ Bynum v. Apperson, 9 Heisk. (Tenn.) 632.

⁸⁷ Warren v. Warren, 16 Me. 259.

accessible, then to any person found at the place where presentment is made. If the person liable is dead, his personal representative must be sought out, if with reasonable diligence he can be found.⁸⁸ In the absence of proof to the contrary, it is sufficient to show a demand for payment of the drawer and his refusal.⁸⁹

§ 433. —Manner of Presentment.—The party called upon to pay an instrument is entitled to have it exhibited, and due presentment is not made unless the instrument is exhibited. It has been held, however, that if the instrument is lost or mislaid, presentment of a copy with a promise of reasonable indemnity is a good presentment to charge the drawer and indorsers.⁹⁰

§ 434. —Bank's Duty to Apply Funds of Party Liable.—If an instrument is payable at a certain bank, and on the date of maturity the party liable thereon has funds on deposit at such bank, the Negotiable Instruments Act provides that the fact is equivalent to an order upon the bank to pay the instrument, if there are funds sufficient for that purpose.⁹¹ This was formerly a disputed question and courts have held both ways on the matter.

PROTEST.

§ 435. Definition; Nature and Object.—Protest is a notarial act, made for want of payment of a promissory note, or for want of acceptance or payment of a bill of exchange, by a notary public, in which it is declared that all parties to such

⁸⁸ Bays' Commercial Law, vol. 2, p. 119.

Demand may be made of the maker of the note, or of the acceptor of the bill, or of their resident agent if the parties themselves cannot be conveniently reached. The maker of a note should be present personally or by agent at the place of payment, prepared to make the payment. It is not necessary that the person making the presentment should be

personally acquainted with the party in charge where the paper is payable. *Bank of Cooperstown v. Woods*, 28 N. Y. 561.

⁸⁹ *Hunt v. Maybee*, 7 N. Y. 266.

⁹⁰ Bays' Commercial Law, vol. 2, p. 120.

⁹¹ Negotiable Instruments Law, § 87, post, p. 303.

Note: Illinois and Nebraska have omitted this section in enacting the statute.—Ed.

instruments will be held responsible to the holder for all damages, exchanges, re-exchanges, etc.⁹² The term is not applicable, technically, to promissory notes, but by general usage includes all acts necessary by law to charge an indorser. In business, when a note is said to be protested, something more is understood than the official declaration of a notary. A request by an indorser to the indorsees "not to protest, that he would waive the necessity thereof," includes all acts popularly accepted by the term. The only thing necessary for the indorsees to do is to demand payment of the maker and give notice to their indorser.⁹³ It includes all that is necessary to hold the indorsers.⁹⁴ The protest is evidence of demand and protest.⁹⁵ This is the formal notice to the world of the dishonor of a negotiable instrument, notice of which is sent to each and every party interested, either as maker, drawer, indorser or acceptor of it. The statutes of Illinois defining the duties of notary public "protests" are but declaratory of their duties in this state upon the subject.⁹⁶

§ 436. Necessity of Protest.—Any bill which appears on its face to be a foreign bill must be protested for nonacceptance or nonpayment as the case may be, else the drawer and indorsers will be discharged.⁹⁷ Inland bills and promissory notes do not need to be protested, but often are, to furnish evidence of due presentment and giving notice of dishonor.⁹⁸

§ 437. Who Authorized to Make Protest.—Protest may be

⁹² Cyc. Law. Dict.

⁹³ Coddington v. Davis, 1 N. Y. 186.

⁹⁴ City Sav. Bank v. Hopson, 53 Conn. 453, 5 Atl. 601.

⁹⁵ Dickins v. Beal, 10 Pet. (U. S.) 572, 9 L. Ed. 538.

⁹⁶ Skelton v. Dustin, 92 Ill. 49.

⁹⁷ Bays' Commercial Law, vol. 2, p. 128; Uniform Negotiable Instruments Law, § 152 *et seq.*, post, p. 310.

The protest of a foreign bill must be made in order to charge the drawer or indorser, unless some good excuse can be made for

the omission; but the omission to allege protest in an action, if an objection at all, is only one of form. It cannot be reached by general demurrer. Hart v. Otis, 41 Ill. App. 431. It must be necessary in order to fix the indorser's liability, otherwise he cannot be subjected to costs of protest. McKay v. Hinman, 13 Neb. 33, 13 N. W. 15.

⁹⁸ Bays' Commercial Law, vol. 2, p. 128.

An inland bill need not be protested. Smith v. Curlee, 59 Ill. 221.

made by a notary public, or by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.⁹⁹ Almost universally, protest is made by a notary public. The other provision is made in case a notary is not available.¹ Such protest must be made by the notary in person.² A notarial certificate of protest stating that the presentment and demand were made by the notary, when they were made by his clerk, voids the certificate.³

§ 438. Time, Place and Manner of Protest.—The details of making protest are fully contained in the Negotiable Instrument Act.⁴ Usually such protest is made on the day of dishonor of a bill, at the place where it is dishonored, or where it is payable.⁵ When an acceptor has been adjudged bankrupt or insolvent, or has made an assignment for benefit of creditors, before a bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.⁶

The law of the place where the notes are payable govern as to time and mode of presentment for payment, manner of process and giving of notice.⁷ Where payment is demanded at the place the note is, by its terms, to be paid, other demand upon the maker is not required.⁸ The notary's certificate of protest is presumptive evidence of presentment during the

⁹⁹ Uniform Negotiable Instruments Law, § 154, post, p. 311.

¹ Bays' Commercial Law, vol. 2, p. 129.

² Bays' Commercial Law, vol. 2, p. 129.

Where protest is necessary, the notary must present the bill in person, unless power has been given to him to substitute another in his place or where custom warrants a presentment by deputy. *Cribbs v. Adams*, 13 Gray (Mass.) 597; *Commercial Bank v. Varnum*, 49 N. Y. 269. A notary cannot delegate his power to protest. *Cole v. Jessup*, 10 N. Y. 96; *Hunt v. Maybee*, 7 N. Y. 266.

³ *Gawtry v. Doane*, 51 N. Y. 84.

⁴ Uniform Negotiable Instruments Law, § 153 *et seq.*, post, p. 310.

⁵ Uniform Negotiable Instruments Law, §§ 155, 156, post, p. 311.

⁶ Uniform Negotiable Instruments Law, § 158, post, p. 311.

See also *Ocean Nat. Bank v. Williams*, 102 Mass. 141; *Jaccard v. Anderson*, 37 Mo. 91.

⁷ *Wooley v. Lyon*, 117 Ill. 244, 6 N. E. 885, 57 Am. Rep. 867; *Pierce v. Indseth*, 106 U. S. 546, 27 L. Ed. 254, 1 Sup. Ct. 418.

⁸ *Guignon v. Union Trust Co.*, 53 Ill. App. 581, *aff'd* 156 Ill. 135, 40 N. E. 556, 47 Am. St. Rep. 186.

proper business hours. These, except where the paper is due from a bank, for the purpose of presenting a note or bill for payment, range until bedtime in the evening.⁹

The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify (1) the time and place of presentment; (2) the fact that presentment was made and the manner thereof; (3) the cause or reason for protesting the bill; (4) the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.¹⁰ A notary's protest of commercial papers must be made on his own knowledge of the facts, and not on hearsay.¹¹

A statement of the facts in connection with a notary's protest cannot vitiate a protest otherwise properly made. A necessary statement or averment, well stated, is not weakened or in any manner affected by the statement of facts not necessary to be stated.¹² No authority is given by statute to any notary to certify a fact independent of the protest.¹³ A note protested by Wm. H. Scudder, Jr., and signed Wm. H. Scudder, sworn to by Wm. H. Scudder, Jr., does not justify the inference that two different persons officiated in the protest.¹⁴

Under the civil law the signature alone of the notary was sufficient without the seal. Many English writers mention only the signature. The protest is said to be a part of the constitution of a foreign bill of exchange. The form is governed by the *lex loci contractus* (where the contract was made) and when required cannot be dispensed with. When the protest, or authenticated copies, is to be received in evidence, the *lex fori* (court where received) governs.¹⁵ Courts take judicial notice of the law merchant, which prevails throughout the United States, except in states where it is so far modified by statute. A notarial protest is known under that law, and

⁹ Skelton v. Dustin, 92 Ill. 49.

¹⁰ Uniform Negotiable Instruments Law, § 153, post, p. 310.

¹¹ Williamson v. Turner, 2 Bay (S. C.) 410, 1 Am. Dec. 625.

¹² Reapers Bank v. Willard, 24 Ill. 439.

¹³ Whitman & Hubbard v. Farm-

ers' Bank of Chattahoochee, 8 Port. (Ala.) 258.

¹⁴ Guignon v. Union Trust Co., 53 Ill. App. 581, aff'd 156 Ill. 135, 40 N. E. 556, 47 Am. St. Rep. 186.

¹⁵ Bank of Rochester v. Gray, 2 Hill (N. Y.) 227.

it requires no witnesses in conjunction with the notary. His act, certified by his signature and official seal, suffices.¹⁶

§ 439. Record of Protest as Prima Facie Evidence.—The statute, making a notary's record of the protest of bills which he is required to keep, or a certified copy thereof, prima facie evidence of the facts therein stated, applies to all bills, both domestic and foreign. Such record or copy is prima facie evidence of demand of payment of the drawee, and of notice of dishonor to the drawer. It is liable, however, to be rebutted by other competent evidence.¹⁷ A certificate of protest by a notary of another state, under the notary's seal, is prima facie evidence that the act had been done by him.¹⁸ In the case of inland bills of exchange, the notarial protest is not evidence of a demand of payment on the drawee nor of notice of nonpayment to the drawer.¹⁹ The notarial certificate of protest is not evidence of that fact.²⁰ A notarial certificate of protest under seal is good on mere production.²¹

§ 440. National Bank Notes.—Whenever any national banking association fails to redeem in the lawful money of the United States any of its circulating notes, upon demand of payment duly made during the usual hours of business, at the office of such association, or at its designated place of redemption, the holder may cause the same to be protested, in one package, by a notary public, unless the president or cashier of the association whose notes are presented for payment, or the president or cashier of the association at the place at which they are redeemable, offers to waive demand and notice of the protest and, in pursuance of such offer, makes, signs and delivers to the party making such demand an admission

¹⁶ *Bradford v. Cooper*, 1 La. Ann. 325.

¹⁷ *Montelius v. Charles*, 76 Ill. 303.

¹⁸ *Fletcher v. Arkansas Nat. Bank*, 62 Ark. 265, 35 S. W. 228, 54 Am. St. Rep. 294.

¹⁹ *Kaskaskia Bridge Co. v. Shan-non*, 1 Gilm. (Ill.) 15.

²⁰ *McAllister v. Smith*, 17 Ill. 328, 65 Am. Dec. 651.

²¹ So held in *Johnson v. Brown*, 154 Mass. 105, 27 N. E. 994, supported by *Porter v. Judson*, 1 Gray (Mass.) 175; *Carter v. Burley*, 9 N. H. 558, 566; *Browne v. Philadelphia Bank*, 6 Serg. & R. (Pa.) 484, 9 Am. Dec. 463; *Pierce v. Indseth*, 106 U. S. 546, 27 L. Ed. 254, 1 Sup. Ct. 418; *Townesley v. Sumrall*, 2 Pet. (U. S.) 170, 7 L. Ed. 386.

in writing, stating the time of the demand, the amount demanded, and the fact of the nonpayment thereof. The notary public, on making such protest or upon receiving such admission, shall forthwith forward such admission or notice of protest to the comptroller of the currency, retaining a copy thereof. If any satisfactory proof is produced to the notary public that the payment of the notes demanded is restrained by order of any court of competent jurisdiction, he shall not protest the same. When the holder of any notes causes more than one note or package to be protested on the same day, he shall not receive pay for more than one protest.²² After a default on the part of an association to pay any of its circulating notes has been ascertained by the comptroller, and notice (if forfeiture of the bonds thereof) has been given by him to the association, it shall not be lawful for the association suffering the same to pay out any of its notes, discount any notes or bills, or otherwise prosecute the business of banking, except to receive and safely keep money belonging to it, and to deliver special deposits.²³ Where no stipulation for interest is made in the note it can only be allowed from the time of protest.²⁴

§ 441. **Marine Protest.**—Marine protest is a writing attested by a justice of the peace, a notary public, or a consul, made and verified by the master of a vessel, stating the severity of a voyage by which a ship has suffered, and showing that it was not owing to the neglect or misconduct of the master.²⁵ If any vessel from any foreign port, compelled by distress of weather, or other necessity, shall put into any port of the United States, not being destined for the same, the master, together with the mate or person next in command, may, within twenty-four hours after her arrival, make protest in the usual form upon oath, before a notary public, or other person duly authorized, or before the collector of the district where the vessel arrives, setting forth the cause or circumstances of such distress or necessity. Such protest, if not made before

²² U. S. Rev. Stat. 1878, sec. 5226.

²³ U. S. Rev. Stat. 1878, sec. 5228.

²⁴ *Bradford v. Cooper*, 1 La. Ann. 325.

²⁵ *Cyc. Law Dict.*

the collector, shall be produced to him, and to the naval officer, if any, and a copy thereof lodged with him or them. The master shall also, within forty-eight hours after such arrival, make report in writing to the collector of the vessel and her cargo, as is directed hereby to be done in other cases. And if it appear to the collector, by the certificate of the wardens of the port, or other officers usually charged with and accustomed to ascertain the condition of vessels arriving in distress, if any, or by the certificate of two reputable merchants, to be named by the collector for that purpose, if there are no such wardens, or other officers duly qualified, that there is a necessity for unloading the vessel, the collector and naval officer, if any, shall grant a permit for that purpose, and shall appoint an inspector to oversee such unloading, who shall keep an account of the same, to be compared with the report made by the master of the vessel.²⁶

NOTICE OF DISHONOR.

§ 442. Necessity of Notice of Dishonor.—"Dishonor" is a term applied to the nonfulfillment of commercial engagements. To dishonor a bill of exchange or promissory note is to refuse or neglect to pay it at maturity.²⁷ A party secondarily liable on negotiable paper is entitled to immediate notice that the party who should have accepted it, or paid it, has failed or refused to do so.²⁸ Unless notice is given according to the provisions of the law, any party entitled to such notice, who does not receive it, is discharged.²⁹ The reputed insolvency

²⁶ U. S. Rev. Stat. 1878, sec. 2891.

²⁷ Cyc. Law Dict.

²⁸ Bays' Commercial Law, vol. 2, p. 128.

In order to fix the liability of indorsers to a promissory note they must be promptly notified that demand had been made of the maker and payment refused, and that the holder looks to them for payment. *Lawrence v. Miller*, 16 N. Y. 235.

An indorser of commercial pa-

per is entitled to notice of protest and nonpayment; if no notice is received by him he is not liable thereon. *Apple v. Lesser*, 93 Ga. 749, 21 S. E. 171.

²⁹ Bays' Commercial Law, vol. 2, p. 126; *Williams v. Paintsville Nat. Bank*, 143 Ky. 781, 137 S. W. 535, Ann. Cas. 1912 D 350; *Nickell v. Bradshaw*, 94 Ore. 580, 183 Pac. 12.

Failure to notify the indorser not only discharges him as a party to the note, but also a debtor upon

of the maker of a note is no excuse for not sending notice to the indorser.³⁰ Bills of exchange are always dishonored before they are handed to a notary to protest. The presentment and demand are practically of no moment to any one. The material thing is notice of dishonor.³¹ Diligent search must be made for the maker before protest, otherwise the note is not dishonored and the indorsers are discharged from liability. If payment has been made by an indorser under a notice of dishonor he is entitled to recovery and interest as damages from the time of payment.³² Every joint indorser is entitled to notice.³³ No demand or notice is necessary on an absolute guaranty;³⁴ nor when the drawer and drawee are the same.³⁵

Noting or initial protest is a memorandum made on the instrument, with the notary's initials, date, and the amount of noting charges, together with a statement of the cause of dishonor, such as "no effects," "no advice," or "no account." This is done to charge the memory of the notary, and should be done on the day of dishonor. If the instrument is promptly protested, there is no necessity of noting.³⁶

§ 443. **Excuses for Not Giving Notice.**—Notice to a drawer is excused when after the exercise of reasonable diligence it cannot be given to or does not reach such drawer, as where the drawer is fictitious or lacks capacity to contract, or where the drawer is the person to whom the instrument is presented for payment, or where the drawer has no right to expect or

the original consideration, though it be secured by a mortgage or deed of trust. *Fitchburg Mut. Fire Ins. Co. v. Davis*, 121 Mass. 121; *Miers v. Brown*, 11 M. & W. 372.

³⁰ *Oliver v. Munday*, 3 N. J. L. 982; *Snyder v. Findley*, 1 N. J. L. 78, 1 Am. Dec. 193.

³¹ *Commercial Bank of Kentucky v. Varnum*, 49 N. Y. 269, citing *Chitty on Bills* (13th Ed.) 457.

³² *Talbot v. National Bank of*

Commonwealth, 129 Mass. 67, 37 Am. Rep. 302.

³³ *Shepard v. Hawley*, 1 Conn. 367, 6 Am. Dec. 244.

Joint indorsers not given notice of dishonor are discharged. *Williams v. Paintsville Nat. Bank*, 143 Ky. 781, 137 S. W. 535, Ann. Cas. 1912 D 350.

³⁴ *City Sav. Bank v. Hopson*, 53 Conn. 453, 5 Atl. 601.

³⁵ *Kaskaskia Bridge Co. v. Shannon*, 1 Gilm. (Ill.) 15.

³⁶ *Commercial Bank v. Barksdale*, 36 Mo. 563.

require the drawee or acceptor to honor the instrument, or where the drawer has countermanded payment.³⁷ In a similar manner, notice to an indorser is excused when after the exercise of reasonable diligence it cannot be given or does not reach such indorser, or where the indorser at the time of the indorsement knew that the drawee was fictitious or had no capacity to contract, or where the indorser is the person to whom the instrument is presented for payment, or where the instrument was made or accepted for his accommodation.³⁸ The circumstances which excuse demand do not relieve the holder from giving due notice to the indorser, if like circumstances do not intervene to prevent that also. Mere personal knowledge by the indorser will not dispense with notice.³⁹ The circumstances which in the law merchant will excuse the demand and notice necessary to charge an indorser are such as amount, in themselves, to a dishonor of the paper by operation of law. They are such as impose a moral or physical impossibility to make the demand with the exercise of that prudent and diligent forecast and attention that a prudent man would use in relation to his own affairs, or the absence of all necessity for demand, superinduced by the changed condition or relation of the parties.⁴⁰ An illegible indorsement excuses notice of protest.⁴¹

§ 444. Waiver of Notice.—The party entitled to notice may waive it by waiver embodied in the instrument or in his indorsement, or by word or deed, before or after time for giving notice.⁴² One who indorses a promissory note, inserting over his signature a waiver of demand and notice, is not entitled to any demand and notice.⁴³

³⁷ Bays' Commercial Law, vol. 2, p. 126.

³⁸ Bays' Commercial Law, vol. 2, p. 127.

³⁹ Lane & Co. v. Bank of West Tennessee, 9 Heisk. (Tenn.) 419.

⁴⁰ Lane & Co. v. Bank of West Tennessee, 9 Heisk. (Tenn.) 419.

⁴¹ Sublette Exch. Bank v. Fitzgerald, 168 Ill. App. 240.

⁴² Bays' Commercial Law, vol. 2, p. 127.

An indorser may waive demand and notice by express words, or by implication of acts or conduct. Sheldon v. Horton, 43 N. Y. 93, 3 Am. Rep. 669. The presentation of the bill at maturity may be waived by agreement. Curtiss v. Martin, 20 Ill. 557.

⁴³ Woodman v. Thurston, 8 Cush. (Mass.) 157.

Where the indorser signs a paper waiving demand, protest and

A neglect on the part of the drawer to provide funds in the hands of the drawee, to meet the bill, amounts to a waiver of notice of protest.⁴⁴ Where one "waives protest" he thereby also waives presentment and notice of dishonor.⁴⁵

§ 445. Form of Notice; Sufficiency.—In view of the importance of notice of dishonor to charge the parties secondarily liable, the law provides in detail as to the time, manner and sufficiency of notice.⁴⁶ The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment.⁴⁷ A written notice need not be signed and an insufficient written notice may be

notice of a note, he is an original promisor and not entitled to notice. *State Trust Co. v. Owen Paper Co.*, 162 Mass. 156, 38 N. E. 438.

⁴⁴ *Brower v. Rupert*, 24 Ill. 182.

⁴⁵ *Bays' Commercial Law*, vol. 2, p. 127.

⁴⁶ *Uniform Negotiable Instruments Law*, §§ 89-118, post, p. 303.

⁴⁷ *Uniform Negotiable Instruments Law*, § 96, post, p. 304.

No particular phrase or form is necessary. The object of it is to inform the party to whom it is sent; first, that the bill or note has been presented; second, that it has been dishonored by nonacceptance, or nonpayment; and third, that the holder considers him liable, and looks to him for payment. And in framing the notice, all that is necessary to apprise the party of the dishonor of the instrument is to intimate that he is expected to pay it. It should comprise, first, a sufficient description of the bill or note to ascertain its identity; second, that it has been duly presented for acceptance or payment to the drawee, acceptor or

maker; third, that it has been dishonored by nonacceptance or nonpayment; fourth, that the holder looks to the party notified for payment. *Gilbert v. Dennis*, 3 Mete. (Mass.) 495, 38 Am. Dec. 329; *Mills v. Bank of United States*, 11 Wheat. (U. S.) 431, 6 L. Ed. 512.

No particular form of words is necessary, but such as to convey notice of dishonor and a description of the bill showing the facts of refusal to accept or pay upon presentment at the right time and place. *Bynum v. Apperson*, 9 Heisk. (Tenn.) 632.

No precise form of words is necessary in giving notice. The terms used must be expressed or implied, sufficiently to identify the note, that payment of it on due presentment has been neglected or refused by the maker. *Cook v. Litchfield*, 9 N. Y. 279; *Cayuga County Bank v. Warden*, 1 N. Y. 413; *Id.* 6 N. Y. 19.

Notice may be written or verbal. *Coddington v. Davis*, 1 N. Y. 186; *Cayuga County Bank v. Warden*, 1 N. Y. 413.

supplemented and validated by verbal communication.⁴⁸ The notary's name may be printed at the foot of the notification.⁴⁹ Requirements as to notice to the indorser of nonpayment of a note need not be stated in express words, but it is sufficient if they follow by necessary or reasonable implication from the language used.⁵⁰ A single seal to several certificates of a notary's is sufficient; he may certify to each act separately and by one certificate verify them all. If it be under his hand and seal of office, it is sufficient. It is unimportant where the seal is affixed. He is not required to certify to the sealing.⁵¹

The notice should describe or perfectly identify the note or bill,⁵² and usually the name of the maker must be stated.⁵³ A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.⁵⁴

Although the Uniform Negotiable Instruments Act has been adopted in nearly all states, there still exists some conflict in the law. Where such conflict exists, it is a general rule that the manner of giving notice and its sufficiency is gov-

⁴⁸ Uniform Negotiable Instruments Law, § 95, post, p. 304.

⁴⁹ *Sussex Bank v. Baldwin*, 17 N. J. L. 487; *Bank of Cooperstown v. Woods*, 28 N. Y. 561.

⁵⁰ *Kewanee Nat. Bank v. Ladd*, 175 Ill. App. 151.

It is not necessary to state that the note was presented for payment, or that the holder looks to the indorser; this may be made to appear by implication. *Burgess v. Vreeland*, 24 N. J. L. 71, 59 Am. Dec. 408.

⁵¹ *Olcott v. Tioga R. Co.*, 27 N. Y. 546, 84 Am. Dec. 298.

⁵² Notice to an indorser of a note of nonpayment must contain the description of the note. *Kewanee Nat. Bank v. Ladd*, 175 Ill. App. 151.

The notice should describe the bill or note in unmistakable terms; should state where the note is,

that the party notified may find it; should state who the holder is, and who gives the notice, or at whose request it is given. The object of the law in requiring a correct description in the notice to the drawer or indorser is that he may be put upon notice of the extent of his liability, and placed in possession of the material facts necessary to enable him to secure the liability of others over to him. *Howland v. Adrain*, 30 N. J. L. 41.

A notice sufficiently descriptive to perfectly identify a note in mind, without knowledge of others of same tenor and date, is sufficient. *Bank of Cooperstown v. Woods*, 28 N. Y. 561.

⁵³ *Home Ins. Co. v. Green*, 19 N. Y. 518, 75 Am. Dec. 361.

⁵⁴ Uniform Negotiable Instruments Law, § 95, post, p. 304.

erned by the law of the place where the note is payable.⁵⁵

§ 446. To Whom Notice Is Given.—In general, notice must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged.⁵⁶ Each indorser of a bill or note is entitled to notice, and so also is the drawer of a bill payable to a third party, as bills generally are. The acceptor of a bill and the maker of a note are not entitled to notice, they being the primary debtors; nor are those who, from their irregular execution of the instrument, are adjudged joint makers or sureties, their contract being to pay in default of the principal at all events.⁵⁷ It is usual for the holder only to give notice to the person from whom he immediately received the bill or note, especially if he is ignorant of the residence of the other parties. His neglect to give notice cannot deprive either of the others of the right to proceed against the person who indorsed to him, provided he in his turn has duly forwarded notice.⁵⁸ A primary debtor, not an indorser, is not entitled to notice of dishonor of a note.⁵⁹ Notice to the assignor of an instrument need not be given by the assignee to charge the assignor.⁶⁰ A bill of exchange must be presented to the drawee within a reasonable time, and where payment is refused, notice must be given promptly to the drawer, otherwise he cannot be held liable.⁶¹ Failure

⁵⁵ *Guernsey v. Imperial Bank of Canada*, 188 Fed. 300.

⁵⁶ *Uniform Negotiable Instruments Law*, § 89, post, p. 303.

When a bill is dishonored, due notice of dishonor, unless excused, is a condition precedent to the liability of the drawer or any indorser thereof. *Benjamin's Chalmers Bills & Notes*, p. 182; *Wood v. Surrells*, 89 Ill. 107; *Walker v. Rogers*, 40 Ill. 278, 89 Am. Dec. 348; *Kupfer v. Bank of Galena*, 34 Ill. 328, 85 Am. Dec. 309.

Notice of refusal to pay must be given to the drawer, where he has or expects funds in the hands of the drawee, for the protection of both. *Welch v. B. C. Taylor*

Mfg. Co., 82 Ill. 579; *Kupfer v. Bank of Galena*, 34 Ill. 328, 85 Am. Dec. 309.

Notice should be sent to all the parties meant to be held liable for payment. *Daniel's Neg. Inst.*, p. 46.

⁵⁷ *Walker v. Rogers*, 40 Ill. 278, 89 Am. Dec. 348.

⁵⁸ *Whitman & Hubbard v. Farmers' Bank*, 8 Port. (Ala.) 258.

⁵⁹ *Guignon v. Union Trust Co.*, 53 Ill. App. 581; *aff'd* 156 Ill. 135, 40 N. E. 556, 47 Am. St. Rep. 186.

⁶⁰ *Harding v. Dilley*, 60 Ill. 528; *State Bank v. Hawley*, 1 Scam. (Ill.) 580.

⁶¹ *Industrial Bank v. Bowes*, 165 Ill. 70, 46 N. E. 10, 56 Am. St.

to promptly present a check for payment and to promptly notify the drawer of its nonpayment does not discharge the drawer unless he has suffered some loss or injury thereby.⁶² Notice may be given either to the party himself or to his agent in that behalf,⁶³ and if a party is dead, the notice must be given to his personal representative.⁶⁴ When an indorser becomes bankrupt and assigns, notice of protest to his assignee will bind such indorser.⁶⁵

Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.⁶⁶

Rep. 228; *Montelius v. Charles*, 76 Ill. 303; *Bickford v. First Nat. Bank of Chicago*, 42 Ill. 238, 89 Am. Dec. 436.

⁶² *Industrial Bank v. Bowes*, 165 Ill. 70, 46 N. E. 10, 56 Am. St. Rep. 228.

⁶³ Uniform Negotiable Instruments Law, § 97, post, p. 304.

Notice to agent is notice to the principal. *Iglehart v. Gibson*, 56 Ill. 81.

If the holder of a note sends it to a bank or other agent for collection, it is sufficient to hold prior indorsers if the agent gives notice of the dishonor in due time to his principal, and if he without delay transmits notice to the prior indorser. *First Nat. Bank v. Smith*, 132 Mass. 227, supported by *Colt v. Noble*, 5 Mass. 167; *Church v. Barlow*, 9 Pick. (Mass.) 547; *True v. Collins*, 3 Allen (Mass.) 438; *Eagle Bank v. Hathaway*, 5 Metc. (Mass.) 212.

⁶⁴ Uniform Negotiable Instruments Law, §§ 97, 98, post, p. 304.

If the holder be dead, notice may be given by his personal representative. *White v. Stoddard*, 11 Gray (Mass.) 258; *Massachusetts Bank v. Oliver*, 10 Cush. (Mass.) 557; *Cayuga County Bank*

v. Bennett, 5 Hill (N. Y.) 236. If the party entitled to notice be dead, and this is known to the holder, notice should be sent to his executor or administrator. The address should be to such party by name. To one of several executors, or administrators, is sufficient. *Massachusetts Bank v. Oliver*, 10 Cush. (Mass.) 557; *Beals v. Peck*, 12 Barb. (N. Y.) 245.

Where a notary makes inquiry at the bank where paper is payable and receives information that the indorser is dead and of the appointment of an executor, a notice of protest mailed to the indorser by name in care of the executor who is named is sufficient evidence of reasonable diligence. *Second Nat. Bank v. Smith*, 91 N. J. L. 531, 103 Atl. 862, 1 A. L. R. 470.

⁶⁵ *American Nat. Bank v. Junk Bros. Lumber & Mfg. Co.*, 94 Tenn. 624, 30 S. W. 753, 28 L. R. A. 492. See Uniform Negotiable Instruments Law, § 101, post, p. 304.

⁶⁶ Uniform Negotiable Instruments Law, § 99, post, p. 304.

Where a bill indorsed by a partnership is dishonored, notice to either of the late partners is sufficient to bind all. *Hubbard v. Matthews*, 54 N. Y. 43, 13 Am.

§ 447. **Who May Give Notice.**—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom notice is given.⁶⁷ Each party to a bill or note, whether by indorsement or mere delivery, has, in all cases, until the day after he has received notice to give or forward notice to his prior indorser.⁶⁸ It should emanate from the holder at the time of its dishonor.⁶⁹ Notice by an agent may be given either in his own name, or in the name of the party entitled to give notice, whether that party be his principal or not.⁷⁰

§ 448. **Manner of Giving Notice.**—Where a party has added an address to his signature, notice of dishonor must be sent to that address, but if he has not given such address, then the notice must be sent either to the post office nearest to his place of residence, or if he live in one place and has a place of business in another, to either of such places. If he is sojourning in another place, notice may be sent to the place where he is sojourning.⁷¹ Where the notice is actually received by the party within the time specified, it is sufficient.⁷²

Rep. 562; supported by *Coster, Robinson & Co. v. Thomason*, 19 Ala. 717; *Brown v. Turner*, 15 Ala. 832; *Slocomb v. De Lizardi*, 21 La. Ann. 355, 99 Am. Dec. 740; *Gates v. Beecher*, 60 N. Y. 518, 19 Am. Rep. 207.

⁶⁷ Uniform Negotiable Instruments Law, § 90, post, p. 303.

⁶⁸ *Whitman & Hubbard v. Farmers' Bank of Chattahoochie*, 8 Port. (Ala.) 258.

⁶⁹ *Cromer v. Platt*, 37 Mich. 132, 26 Am. Rep. 503; *Bank of Utica v. Smith*, 18 Johns. (N. Y.) 230.

⁷⁰ Uniform Negotiable Instruments Law, § 91, post, p. 303.

⁷¹ Uniform Negotiable Instruments Law, § 108, post, p. 305.

Adding the word "Memphis" under his name, by the indorser, may be held as an implied direc-

tion to give notice through the post office at Memphis. *Tomeny v. German Nat. Bank*, 9 Heisk. (Tenn.) 493.

If the indorser resides out of the state it may be mailed to his place of business or where he receives his mail. *Wooley v. Lyon*, 117 Ill. 244, 6 N. E. 885, 57 Am. Rep. 867.

⁷² Uniform Negotiable Instruments Law, § 108, post, p. 305.

If the parties are not to be found at their place of business, it may be left at their residence with any one residing in the family, providing the party himself is not at home. *John v. City Nat. Bank*, 57 Ala. 96; *Blakely v. Grant*, 6 Mass. 386; *Adams v. Wright*, 14 Wis. 408.

If left at the indorser's office in

It is not incumbent on the indorser to show the holder where the maker is to be found, so that he may make a demand on the maker, when no application is made to him by the holder.⁷³ If facts exist which render a notice uncertain or equivocal, and the knowledge of these facts are confined to the indorser, or is not brought home to the holder of the paper, the notice is sufficient to charge the indorser.⁷⁴

Where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.⁷⁵ Notice is deemed deposited in the post office when it is deposited in any

a conspicuous place, it is sufficient. *Hobbs v. Straine*, 149 Mass. 212, 21 N. E. 365.

Notice left at the room where indorser does business and receives mail, although he is often absent for some time, is sufficient. *Lamkin v. Edgerly*, 151 Mass. 348, 24 N. E. 49.

When the indorser resides at the place of presentment and dishonor of the note, the notice must be served on him personally, or left at his dwelling or place of business, if he has one there. *Van Vechten v. Pruyn*, 13 N. Y. 549, supported by *Sheldon v. Benham*, 4 Hill (N. Y.) 129, 40 Am. Dec. 271; *Ransom v. Mack*, 2 Hill (N. Y.) 587, 38 Am. Dec. 602; *Smedes v. Bank of Utica*, 20 Johns. (N. Y.) 372; *Ireland v. Kip*, 10 Johns. (N. Y.) 490.

⁷³ *Lane & Co. v. Bank of West Tennessee*, 9 Heisk. (Tenn.) 419.

⁷⁴ *Bank of Cooperstown v. Woods*, 28 N. Y. 545.

⁷⁵ *Uniform Negotiable Instruments Law*, § 105, post, p. 304; *Second Nat. Bank v. Smith*, 91 N. J. L. 531, 103 Atl. 862, 1 A. L. R. 470.

Notice sent to the indorser's place of business, and there re-

mailed to his residence by his bookkeeper, duly stamped, with return card on envelope, and sent to the post office by the office boy, as customary with the daily mail, is sufficient, although never received by the indorser. *Swampscott Mach. Co. v. Rice*, 159 Mass. 404, 34 N. E. 520.

If addressed to the indorser and left at the post office where he is postmaster, it is sufficient. *Cook v. Renick*, 19 Ill. 598.

If sent by mail it must be properly addressed to the party at a distance. It should be directed to the post office at or nearest to the party's place of residence or place of business. *Daniel's Neg. Inst.*, p. 77; *Sherman v. Clark*, 3 McLean (U. S.) 91, Fed. Cas. No. 12763; *Bank of Columbia v. Lawrence*, 1 Pet. (U. S.) 578, 7 L. Ed. 269.

It is immaterial whether the indorser receives notice so long as he is properly served. The rights of a holder of a note are not affected if the notice does not reach the indorser. Due diligence in serving him notice is sufficient. *Gawtry v. Doane*, 51 N. Y. 84; *Dickins v. Beal*, 10 Pet. (U. S.) 572, 9 L. Ed. 538.

branch post office or in any letter box under the control of the post office department.⁷⁶ Evidence of a manager of a collecting bank as to mailing notices of dishonor in the usual course of business has been held sufficient to admit secondary evidence of the contents of the notices, against another indorser.⁷⁷

The main thing is to show that notice was received by the proper person within proper time. A notice stating that it had been given in writing, of the demand, nonpayment and protest to the indorsers and left at their offices, is sufficient.⁷⁸ Where the parties reside in the same town, a notice left at the place of business of the individual is sufficiently described as the office of the party.⁷⁹ Where an indorser has no residence in the city where the note is payable, and notice is mailed to him in care of subsequent indorsers, the failure of such subsequent indorsers to forward the notice is not negligence rendering a bank who employs the notary liable.⁸⁰

§ 449. Time of Notice.—The time of giving notice is expressly stated by the Uniform Negotiable Instruments Act, and where the parties giving and to receive notice reside in the same place, it must be given so as to reach the person to be notified on the day following.⁸¹ If the person giving notice and the person to receive it reside at different places, such notice must be deposited in the post office in time to go by mail the day following, or by the next mail.⁸² A party receiv-

⁷⁶ Uniform Negotiable Instruments Law, § 106, post, p. 305.

Depositing notice in a street post office box is the same as in the post office. *Johnson v. Browne*, 154 Mass. 105, 27 N. E. 994, supported by *Pearce v. Langft*, 101 Pa. St. 507, 47 Am. Rep. 737.

⁷⁷ *W. A. Fowler Paper Co. v. Bert Jones Sales Book Co.*, 183 Ill. App. 310.

⁷⁸ *Curry v. Bank of Mobile*, 8 Port. (Ala.) 360.

⁷⁹ *Curry v. Bank of Mobile*, 8 Port. (Ala.) 360.

⁸⁰ *Brill v. Jefferson Bank*, 159

N. Y. App. Div. 461, 144 N. Y. Supp. 539.

⁸¹ Uniform Negotiable Instruments Law, § 103, post, p. 304.

⁸² Uniform Negotiable Instruments Law, § 104, post, p. 304.

Notice must be placed in the post office in time to go by mail of the day following the day of dishonor. It is necessary to show positively that the notice was deposited in time for the mail of the day following. *Burgess v. Vreeland*, 24 N. J. L. 71, 59 Am. Dec. 408; *State Bank of Elizabeth v. Ayers*, 7 N. J. L. 130, 11 Am. Dec. 535.

ing notice has the same time, after such receipt, to give notice to antecedent parties.⁸³ Strict proof of mailing at the time specified is required to charge the indorsers. The notice must be given in accordance with the statute.⁸⁴

It is the duty of the holder to give immediate notice to the drawer if it be a bill, and to the indorser whether it be a bill or note. The party primarily liable is not entitled to notice, for it was his duty to have provided for payment of the paper; and the fact that he is maker or acceptor for accommodation does not change the rule. Notice is not due to any party to a bill or note not negotiable.⁸⁵ By presentment on the day of maturity and giving notice of dishonor, the liability of the drawer of an inland bill is fixed.⁸⁶

Negligence in sending notice of protest is no excuse. If the indorser fails to receive notice he is discharged from liability unless the holder shows he has used due diligence in his efforts to find him. Where this can be shown, however, it is immaterial that the notice does not reach the indorser.⁸⁷ An indorser who has changed his residence without the knowledge of the holder is bound by notice sent to his former place of residence, if the holder is not guilty of negligence in his failure to have knowledge of the change.⁸⁸

§ 450. Notary's Certificate as Evidence.—Ordinarily a notary's certificate is sufficient proof of failure to pay at maturity, and of notice of dishonor,⁸⁹ and under some statutes,

⁸³ Uniform Negotiable Instruments Law, § 107, post, p. 305.

⁸⁴ Nickell v. Bradshaw, 94 Ore. 580, 183 Pac. 12.

⁸⁵ King v. Crowell, 61 Me. 244, 14 Am. Rep. 560; Farmers' Bank v. Duvall, 7 Gill & J. (Md.) 78.

⁸⁶ Wood v. Surrells, 89 Ill. 107.

⁸⁷ American Nat. Bank v. Junk Bros. Lumber & Mfg. Co., 94 Tenn. 624, 30 S. W. 753, 28 L. R. A. 492.

⁸⁸ Requa v. Collins, 51 N. Y. 148; Bank of Utica v. Phillips, 3 Wend. (N. Y.) 408; American Nat. Bank v. Junk Bros. Lumber & Mfg. Co., 94 Tenn. 624, 30 S. W.

753, 28 L. R. A. 492; Harris v. Memphis Bank, 4 Humph. (Tenn.) 518.

⁸⁹ Feigenspan v. McDonnell, 201 Mass. 341, 87 N. E. 624.

Certificate is prima facie proof that notice was given in compliance with the Uniform Negotiable Instruments Act, § 108. Scott v. Brown, 240 Pa. 328, 87 Atl. 431.

Demand for payment of a foreign bill of exchange, refusal, protest and notice may be proved by the notary's certificate under his seal. Sublette Exch. Bank v. Fitzgerald, 168 Ill. App. 240.

a certificate of protest of a foreign notary is admissible without proof as to the authenticity of the notary's signature.⁹⁰ A memorandum made at the bottom of a certificate stating the fact of sending of notice of protest, which is not part of the certificate, is not evidence of such fact.⁹¹

To destroy the effect of the certificates of the notary as presumptive evidence, the party must positively deny a receipt of the notice. An affidavit denying receipt upon information and belief will not answer the requirements of the statutes and cannot be treated as an affidavit.⁹²

UNIFORM NEGOTIABLE INSTRUMENTS LAW.

The Uniform Negotiable Instruments Law is a revision of the English Bills of Exchange Act of 1882, with such changes as adapt it to the existing American Law. It was prepared by a committee of the American Bar Association, and has been adopted in the great majority of the states.⁹³

GENERAL PROVISIONS.

Definition.—This act shall be known as the Negotiable Instruments Law. In this act, unless the context otherwise requires: "Acceptance" means an acceptance completed by delivery or notification. "Action" includes counterclaim and set-off. "Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not. "Bearer" means the person in possession of a bill or note which is payable to bearer. "Bill" means bill of exchange and "note" means negotiable promissory note. "Delivery" means transfer of possession, actual or consecutive, from one person to another. "Holder" means the payee or indorser of a bill or note, who is in possession of it, or the bearer thereof. "Indorsement" means an indorsement com-

Certificate of foreign notary as to presentment, demand for payment and notice of dishonor are incompetent to establish such facts as to promissory note, though evidence as to foreign bill of exchange. *Vaughan v. Potter*, 131 Ill. App. 334.

On a foreign bill, the notarial protest and seal is evidence of the fact, but in case of a promissory note it is not (unless in case of

the removal or death of the notary); the demand and refusal must be proved by other evidence. *Barkalow v. Johnson*, 16 N. J. L. 397.

⁹⁰ *City Nat. Bank v. Given*, 103 S. C. 174, 87 S. E. 998.

⁹¹ *Zollner v. Moffitt*, 222 Pa. 644, 72 Atl. 285.

⁹² *Gawtry v. Doane*, 51 N. Y. 84.

⁹³ See post, § 451 *et seq.*, Statutory Requirements.

pleted by delivery. "Instrument" means negotiable instrument. "Issue" means the first delivery of the instrument, complete in form to a person who takes it as a holder. "Person" includes a body of persons, whether incorporated or not. "Value" means valuable consideration. "Written" includes printed, and "writing" includes print. THE PERSON "PRIMARILY" LIABLE on an instrument is the person who by the terms of the instrument is absolutely required to pay the same; all other parties are "secondarily" liable. REASONABLE TIME—In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case. TIME COMPUTED—Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day. APPLICATION—The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage hereof. LAW MERCHANT—In any case not provided for in this act the rules of the law merchant shall govern.

TITLE I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

ARTICLE I.

FORM AND INTERPRETATION.

Section 1. **Form**—An instrument to be negotiable must conform to the following requirements: (1) It must be in writing and signed by the maker or drawer, (2) must contain an unconditional promise or order to pay a sum certain in money, (3) must be payable on demand, or at a fixed or determinable future time, (4) must be payable to order or to bearer, and (5) where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Sec. 2. **The sum payable** is a sum certain within the meaning of this act, although it is to be paid (1) with interest, or (2) by stated instalments, or (3) by stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due, or (4) with exchange, whether at a fixed rate or at the current rate, or (5) with costs of collection or an attorney's fee, in case payment shall not be made at maturity.

Sec. 3. **An unqualified order or promise to pay is unconditional**, within the meaning of this act, though coupled with (1) an indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount, or (2) a statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional.

Sec. 4. **An instrument is payable at a determinable future time**,

within the meaning of this act, which is expressed to be payable (1) at a fixed period after date or sight, or (2) on or before a fixed or determinable future time specified therein, or (3) on or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

Sec. 5. Additional provision not affecting negotiability—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which (1) authorizes the sale of collateral securities in case the instrument be not paid at maturity, or (2) authorizes a confession of judgment if the instrument be not paid at maturity, or (3) waives the benefit of any law intended for the advantage or protection of the obligor, or (4) gives the holder an election to require something to be done in lieu of payment of money. But nothing in this section shall validate any provision or stipulation otherwise illegal.

Sec. 6. Omissions; seal; particular money—The validity and negotiable character of an instrument are not affected by the fact that (1) it is not dated, or (2) does not specify the value given, or that any value has been given therefor, or (3) does not specify the place where it is drawn or the place where it is payable, or (4) bears a seal, or (5) designates a particular kind of current money in which payment is to be made. But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

Sec. 7. Payable on demand—An instrument is payable on demand (1) where it is expressed to be payable on demand, or at sight, or on presentation, or (2) in which no time for payment is expressed. Where an instrument is issued, accepted, or indorsed when overdue, it is as regards the person so issuing, accepting, or indorsing it, payable on demand.

Sec. 8. Payable to order—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order (1) a payee who is not maker, drawer, or drawee, or (2) the drawer or maker, or (3) the drawee, or (4) two or more payees jointly, or (5) one or some of several payees, or (6) the holder of an office for the time being. Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

Sec. 9. Payable to bearer—The instrument is payable to bearer (1) when it is expressed to be so payable, or (2) when it is payable to a person named therein or bearer, or (3) when it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable, or (4) when the name of the payee does not purport to be the name of any person, or (5) when the only or last indorsement is an indorsement in blank.

Sec. 10. Language—The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

Sec. 11. Date—Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement, as the case may be.

Sec. 12. Post dated—The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

Sec. 13. Undated; holder may insert date—Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

Sec. 14. Blanks may be filled by holder—Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature, in order that the paper may be converted into a negotiable instrument, operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given, and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given, and within a reasonable time.

Sec. 15. Incomplete instrument not delivered—Where an incomplete instrument has not been delivered, it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

Sec. 16. Delivery—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by, or under the authority of, the party making, drawing, accepting, or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all

parties prior to him, so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Sec. 17. Ambiguous language—Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply: (1) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount. (2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof. (3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued. (4) Where there is conflict between the written and printed provisions of the instrument, the written provisions prevail. (5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either, at his election. (6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser. (7) Where an instrument containing the words, "I promise to pay," is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

Sec. 18. Liable for signature—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

Sec. 19. Signature by agent—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

Sec. 20. Liability of agent signing—Where the instrument contains, or a person adds to his signature, words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

Sec. 21. A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

Sec. 22. The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

Sec. 23. Where a signature is forged or made without the authority

of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

ARTICLE II.

CONSIDERATION.

Sec. 24. **Valuable consideration**—Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

Sec. 25. **What constitutes value**—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

Sec. 26. **Holder for value**—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

Sec. 27. **Holder has lien**—Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

Sec. 28. **Absence or failure of consideration** is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense *pro tanto* whether the failure is an ascertained and liquidated amount or otherwise.

Sec. 29. **An accommodation party** is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

ARTICLE III.

NEGOTIATION.

Sec. 30. **Negotiated; transferred**—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

Sec. 31. **The indorsement** must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

Sec. 32. **Indorsement entire**—The indorsement must be an indorse-

ment of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

Sec. 33. Indorsement special or blank—An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

Sec. 34. A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

Sec. 35. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

Sec. 36. An indorsement is restrictive which either (1) prohibits the further negotiation of the instrument, or (2) constitutes the indorsee the agent of the indorser, or (3) vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

Sec. 37. Effect of restrictive indorsement—A restrictive indorsement confers upon the indorsee the right (1) to receive payment of the instrument, (2) to bring any action thereon that the indorser could bring, (3) to transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so. But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

Sec. 38. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse," or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

Sec. 39. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

Sec. 40. Indorsement payable to bearer—Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

Sec. 41. Payable to order—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

Sec. 42. Drawn or indorsed to cashier—Where an instrument is drawn or indorsed to a person as “cashier” or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

Sec. 43. Wrong names—Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature.

Sec. 44. Representative indorsement—Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Sec. 45. Date of indorsement—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

Sec. 46. Place of indorsement—Except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

Sec. 47. Negotiable until paid—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Sec. 48. The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

Sec. 49. Effect of transfer without indorsement—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

Sec. 50. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

ARTICLE IV.

RIGHTS OF THE HOLDER.

Sec. 51. Holder may sue—The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

Sec. 52. A holder in due course is a holder who has taken the instrument under the following conditions: (1) That it is complete and regular upon its face, (2) that he became the holder of it before it was

overdue, and without notice that it had been previously dishonored, if such was the fact; (3) that he took it in good faith and for value; (4) that at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Sec. 53. A holder not in due course—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

Sec. 54. Notice before full amount paid—Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

Sec. 55. Title defective—The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

Sec. 56. Notice of defect—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

Sec. 57. A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

Sec. 58. When subject to the same defenses—In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

Sec. 59. Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

ARTICLE V.

LIABILITIES OF PARTIES.

Sec. 60. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor; and admits the existence of the payee and his then capacity to indorse.

Sec. 61. The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

Sec. 62. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits (1) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and (2) the existence of the payee and his then capacity to indorse.

Sec. 63. Indorser—A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

Sec. 64. Irregular indorser—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules: (1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties. (2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer. (3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

Sec. 65. Warranty by delivery or indorsement—Every person negotiating an instrument by delivery or by a qualified indorsement, warrants (1) that the instrument is genuine and in all respects what it purports to be; (2) that he has a good title to it; (3) that all prior parties had capacity to contract; (4) that he has no knowledge of any fact which would impair the validity of the instrument or render it valueless. But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

Sec. 66. General indorser—Every indorser who indorses without qualification warrants, to all subsequent holders in due course, (1) the matters and things mentioned in subdivisions one, two, and three of the next preceding section and (2) that the instrument is at the time of his indorsement valid and subsisting. And, in addition, he

engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

Sec. 67. Liability of indorser—Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

Sec. 68. Liable in order of indorsement—As respects one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorseees who indorse are deemed to indorse jointly and severally.

Sec. 69. Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section 65 of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

ARTICLE VI.

PRESENTMENT FOR PAYMENT.

Sec. 70. Want of demand on principal—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

Sec. 71. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

Sec. 72. Presentment for payment, to be sufficient, must be made (1) by the holder, or by some person authorized to receive payment on his behalf; (2) at a reasonable hour on a business day; (3) at a proper place, as herein defined; (4) to the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made.

Sec. 73. Presentment for payment is made at the proper place: (1) Where a place of payment is specified in the instrument and it is there presented; (2) where no place of payment is specified but the address of the person to make payment is given in the instrument and it is there presented; (3) where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment; (4) in any other case, if presented to the person to make payment wherever he

can be found, or if presented at his last known place of business or residence.

Sec. 74. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

Sec. 75. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

Sec. 76. Drawer dead—Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence, he can be found.

Sec. 77. Partners—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

Sec. 78. Joint debtors—Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

Sec. 79. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

Sec. 80. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

Sec. 81. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

Sec. 82. Presentment for payment is dispensed with: (1) Where after the exercise of reasonable diligence presentment as required by this act cannot be made; (2) where the drawee is a fictitious person; (3) by waiver of presentment, express or implied.

Sec. 83. The instrument is dishonored by nonpayment when (1) it is duly presented for payment and payment is refused or cannot be obtained, or (2) presentment is excused and the instrument is overdue and unpaid.

Sec. 84. Persons secondarily liable—Subject to the provisions of this act, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon, accrues to the holder.

Sec. 85. Days of grace; maturity—Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday or a holiday, the instrument is payable

on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon Saturday when that entire day is not a holiday.

Sec. 86. **Time; after date; sight; how computed**—Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

Sec. 87. **Where the instrument is made payable at a bank** it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

Sec. 88. **Payment is made in due course** when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

ARTICLE VII.

NOTICE OF DISHONOR.

Sec. 89. **Notice to whom**—Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

Sec. 90. **Notice for whom**—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

Sec. 91. **Notice by agent**—Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

Sec. 92. **Effect of notice for holder**—Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

Sec. 93. **Effect of notice by party entitled to**—Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

Sec. 94. **When agent may give notice**—Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

Sec. 95. When notice sufficient—A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

Sec. 96. Form of notice—The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

Sec. 97. To whom notice may be given—Notice of dishonor may be given either to the party himself or to his agent in that behalf.

Sec. 98. When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if, with reasonable diligence, he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

Sec. 99. Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

Sec. 100. Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

Sec. 101. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

Sec. 102. Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act.

Sec. 103. Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times: (1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following; (2) if given at his residence, it must be given before the usual hours of rest on the day following; (3) if sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.

Sec. 104. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times: (1) If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter. (2) If given otherwise than through the post office; then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision.

Sec. 105. Where notice of dishonor is duly addressed and deposited

in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

Sec. 106. Notice is deemed to have been deposited in the post office when deposited in any branch post office or in any letter box under control of the post office department.

Sec. 107. Notice to subsequent party; time—Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

Sec. 108. Where notice to be sent—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows: (1) Either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters; or (2) if he live in one place, and have his place of business in another, notice may be sent to either place; or (3) if he is sojourning in another place, notice may be sent to the place where he is sojourning. But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.

Sec. 109. Notice of dishonor may be waived either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

Sec. 110. Who affected by waiver—Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

Sec. 111. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

Sec. 112. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

Sec. 113. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

Sec. 114. Notice of dishonor is not required to be given to the drawer in either of the following cases: (1) Where the drawer and drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) where the drawer is the person to whom the instrument is presented for payment; (4) where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (5) where the drawer has countermanded payment.

Sec. 115. Notice of dishonor is not required to be given to an indorser in either of the following cases: (1) Where the drawee is a

fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument; (2) where the indorser is the person to whom the instrument is presented for payment; (3) where the instrument was made or accepted for his accommodation.

Sec. 116. Where due notice of dishonor by nonacceptance has been given, notice of subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.

Sec. 117. An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.

Sec. 118. Protest—Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment as the case may be; but protest is not required, except in the case of foreign bills of exchange.

ARTICLE VIII.

DISCHARGE OF NEGOTIABLE INSTRUMENTS.

Sec. 119. How—A negotiable instrument is discharged: (1) By payment in due course by or on behalf of the principal debtor; (2) by payment in due course by the party accommodated, where the instrument is made or accepted for accommodation; (3) by the intentional cancellation thereof by the holder; (4) by any other act which will discharge a simple contract for the payment of money; (5) when the principal debtor becomes the holder of the instrument at or after maturity in his own right.

Sec. 120. A person secondarily liable on the instrument is discharged: (1) By any act which discharges the instrument; (2) by the intentional cancellation of his signature by the holder; (3) by the discharge of a prior party; (4) by a valid tender of payment made by a prior party; (5) by a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved; (6) by any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

Sec. 121. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except (1) where it is payable to the order of a third person, and has been paid by the drawer; and (2) where it was made or accepted for accommodation, and has been paid by the party accommodated.

Sec. 122. The holder may expressly renounce his rights against any party to the instrument, before, at, or after its maturity. An

absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

Sec. 123. A cancellation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

Sec. 124. Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

Sec. 125. What constitutes alteration—Any alteration which changes (1) the date, (2) the sum payable, either for principal or interest, (3) the time or place of payment, (4) the number or the relations of the parties, (5) the medium or currency in which payment is to be made, or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

TITLE II.

BILLS OF EXCHANGE.

ARTICLE I.

FORM AND INTERPRETATION.

Sec. 126. Definition of bill of exchange—A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

Sec. 127. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

Sec. 128. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

Sec. 129. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

Sec. 130. When bill may be treated as a promissory note—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

Sec. 131. Referee in case of need—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

ARTICLE II.

ACCEPTANCE.

Sec. 132. How made—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

Sec. 133. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such a request is refused, may treat the bill as dishonored.

Sec. 134. An acceptance on separate paper—Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

Sec. 135. Promise to accept—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

Sec. 136. The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance is given dates as of the day of presentation.

Sec. 137. Liability of drawee for destroying bill—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same.

Sec. 138. Acceptance of incomplete bill—A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

Sec. 139. An acceptance is either general or qualified—A general

acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

Sec. 140. General acceptance—An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

Sec. 141. Qualified acceptance—An acceptance is qualified, which is: (1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated; (2) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn; (3) local, that is to say, an acceptance to pay only at a particular place; (4) qualified as to time; (5) the acceptance of some one or more of the drawees, but not of all.

Sec. 142. Rights of parties as to qualified acceptance—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.

ARTICLE III.

PRESENTMENT FOR ACCEPTANCE.

Sec. 143. Presentment for acceptance must be made: (1) Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or (2) where the bill expressly stipulates that it shall be presented for acceptance; or (3) where the bill is drawn payable elsewhere than at the residence or place of business of the drawee. In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

Sec. 144. Failure to present releases drawer and indorsers—Except as herein otherwise provided, the holder of a bill, which is required by the next preceding section to be presented for acceptance, must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so the drawer and all indorsers are discharged.

Sec. 145. Presentment; how made—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and (1) where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only. (2) Where the drawee is dead,

presentment may be made to his personal representative. (3) Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

Sec. 146. Days for presentation—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon on that day.

Sec. 147. Time insufficient—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawers and indorsers.

Sec. 148. Presentment for acceptance is excused, and a bill may be treated as dishonored by nonacceptance, in either of the following cases: (1) Where the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill; (2) where, after the exercise of reasonable diligence, presentment cannot be made; (3) where, although presentment has been irregular, acceptance has been refused on some other ground.

Sec. 149. A bill is dishonored by nonacceptance: (1) When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained, or (2) when presentment for acceptance is excused and the bill is not accepted.

Sec. 150. Duty of holder when not accepted—When a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers.

Sec. 151. Rights of holder when not accepted—When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder, and no presentment for payment is necessary.

ARTICLE IV.

PROTEST.

Sec. 152. Protest necessary—Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

Sec. 153. How made—The protest must be annexed to the bill, or

must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify (1) the time and place of presentment; (2) the fact that presentment was made and the manner thereof; (3) the cause or reason for protesting the bill; (4) the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

Sec. 154. **By whom**—Protest may be made by (1) a notary public; or (2) by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

Sec. 155. **When to be made**—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

Sec. 156. **Where made**—A bill must be protested at the place where it is dishonored, except that when a bill, drawn payable at the place of business or residence of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

Sec. 157. **Nonacceptance and nonpayment**—A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

Sec. 158. **Protest before maturity; insolvency**—Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

Sec. 159. **Protest is dispensed with** by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Sec. 160. **Where a bill is lost or destroyed or is wrongly detained** from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

ARTICLE V.

ACCEPTANCE FOR HONOR.

Sec. 161. **When may be**—Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one

party, there may be a further acceptance by a different person for the honor of another party.

Sec. 162. **How**—An acceptance for honor *supra* protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

Sec. 163. **When deemed for drawer**—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

Sec. 164. **The acceptor for honor is liable** to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

Sec. 165. **The acceptor for honor by such acceptance engages** that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.

Sec. 166. **Maturity when payable after sight**—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor.

Sec. 167. **Protest when accepted for honor**—Where a dishonored bill has been accepted for honor *supra* protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

Sec. 168. **Presentment for payment to the acceptor for honor** must be made as follows: (1) If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity. (2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 104.

Sec. 169. **Delay excused**—The provisions of section 81 apply where there is delay in making presentment to the acceptor for dishonor or referee in case of need.

Sec. 170. **When dishonored must be protested**—When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

ARTICLE VI.

PAYMENT FOR HONOR.

Sec. 171. **Who may make**—where a bill has been protested for nonpayment, any person may intervene and pay it *supra* protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

Sec. 172. **How made**—The payment for honor *supra* protest in order to operate as such and not as a mere voluntary payment must be at

tested by a notarial act of honor which may be appended to the protest or from an extension to it.

Sec. 173. Declaration before payment—The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

Sec. 174. Preference of parties offering to pay—Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

Sec. 175. Effect on subsequent parties—Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Sec. 176. Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

Sec. 177. Rights of payer for honor—The payer for honor on paying to the holder the amount of the bill, and the notarial expenses incident to its dishonor, is entitled to receive both the bill itself and the protest.

ARTICLE VII.

BILLS IN A SET.

Sec. 178. Bills in set constitute one bill—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

Sec. 179. Rights of holders of different parts—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

Sec. 180. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

Sec. 181. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

Sec. 182. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

Sec. 183. Payment of one discharges all—Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

TITLE III.

PROMISSORY NOTES AND CHECKS.

Sec. 184. Note defined—A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

Sec. 185. Check defined—A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act, applicable to a bill of exchange payable on demand, apply to a check.

Sec. 186. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

Sec. 187. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

Sec. 188. Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

Sec. 189. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

STATUTORY REQUIREMENTS.

§ 451. Alabama—PROTEST—See Uniform Negotiable Instruments Law. Damages cover exchange in this country. For foreign currency add exchange. DAYS OF GRACE—abolished. HOLIDAYS—Sunday, Jan. 1, Jan. 19, Feb. 22, April 13, April 26, June 3, July 4, first Monday in September, Thanksgiving Day. If any fall on a Sunday, then the following Monday; paper entitled to days of grace, or subject to protest falling due on a holiday, must be taken as due on the next succeeding day. LEGAL INTEREST—8 per cent.

§ 452. Alaska—PROTEST—bills of exchange within United States but out of district draw interest, 5 per cent damages, costs and charges of protest. When payable without limits of United States, protest subjects party liable for contents of bill, damages at rate of 10 per cent, interest and expenses. HOLIDAYS—Sunday, Christmas Day, or other legal holiday, Thanksgiving Day. DAYS OF GRACE—allowed.

§ 453. Arizona—See Uniform Negotiable Instruments Law. DAYS OF GRACE—abolished. HOLIDAYS—Sunday, Jan. 1, Feb. 14, 22, May 30, July 4, first Monday in September, Oct. 12, Dec. 25, general election days, Thanksgiving Day, Arbor Day. If any of these fall on Sunday, the following Monday is observed. Time computed by

excluding first and including last day, unless a holiday. **LEGAL INTEREST**—6 per cent; but parties may agree in writing for a larger rate not exceeding 10 per cent.

§ 454. **Arkansas**—See Uniform Negotiable Instruments Law. **DAYS OF GRACE**—abolished. **HOLIDAYS**—Christmas, New Year's Day, July 4, Thanksgiving Day, Washington's birthday, Labor Day (the first Monday in September), General Robert E. Lee's birthday (January 19), all general biennial election days, June 3, Jefferson Davis' birthday, October 12, Columbus Day (not affecting commercial paper, execution of instruments nor interfering with judicial proceedings). **DAMAGES**—for protested bills of exchange drawn or negotiated within the state, for value received. First. If drawn on any person at any place within the state, 2 per cent on the principal. Second. If payable in Alabama, Louisiana, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, Missouri or any Ohio river point, 4 per cent on the principal. Third. If payable within the United States other than before stated, 5 per cent on the principal. Fourth. If payable without the United States, 10 per cent on the principal. If for value received, and payable to order or bearer, drawn on any person at any place within the state, accepted and protested for nonpayment. First. Drawn by any person at any place within this state, 2 per cent on principal. Second. If drawn outside this state but within the United States, 6 per cent on principal. Third. If drawn outside the United States, at 10 per cent on principal. In addition, protest fees and interest at 10 per cent per annum on the principal are allowed from the date of protest until paid. Right of action allowed if properly protested. **LEGAL INTEREST**—6 per cent; can in writing contract for 10 per cent.

§ 455. **California**—See Uniform Negotiable Instruments Law. **DAYS OF GRACE**—abolished. **HOLIDAYS**—Sunday, 1st day of January, 12th and 22nd days of February, 30th day of May, 4th day of July, 9th day of September, first Monday of September, 12th day of October, 25th day of December, first days of election in the state, every fast, Thanksgiving or holiday appointed by the President of the United States or the governor of the state. If these days fall on a Sunday, then the next day, Monday, is a holiday. **LEGAL INTEREST**—7 per cent; a higher rate permitted by agreement if in writing.

§ 456. **Colorado**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—in cities of 100,000 population, during June, July and Aug., Saturday after 12 o'clock, Sunday, Jan. 1, Feb. 12, 22, May 30, July 4, Dec. 25, Thanksgiving Day, first Monday in September, November, election day. If any of these days fall on a Sunday, then the Monday following. When the day of maturity falls upon Sunday, a holiday or part holiday, the instrument is payable on the next succeeding business day. If payable on Saturday it must be presented on the next succeeding business day, except, when payable on demand, may, at the option of the holder, be presented for payment before 12 o'clock

noon. The day of date is not a part of the time. **LEGAL INTEREST**—8 per cent.

§ 457. **Connecticut**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Jan. 1, Feb. 12, 22, May 30, July 4, Sept. first Monday, Oct. 12, Dec. 25, Sunday, or any day appointed by the President or governor, as Thanksgiving or fasting or religious observance. When any of these come on Sunday, the following Monday is to be observed. On Saturday of each week banking hours end at 12 o'clock. **LEGAL INTEREST**—6 per cent.

§ 458. **Delaware**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Jan. 1, Feb. 12, 22, May 30, July 4, first Monday in September, Oct. 12, Thanksgiving Day, Dec. 25, general election day, and in Kent and New Castle counties, Saturday afternoon after 12 o'clock is a legal holiday. If any holiday falls on Sunday, the following Monday is observed. **DAYS OF GRACE**—abolished. **DAMAGES**—on foreign protested bills of exchange, 20 per cent. **LEGAL INTEREST**—6 per cent.

§ 459. **District of Columbia**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Jan. 1, Feb. 22, May 30, July 4, first Monday in September, Thanksgiving Day, Dec. 25, Presidential Inauguration Day, Saturday afternoon after 12 o'clock noon. Any holiday falling on Sunday, the following Monday is observed. **LEGAL INTEREST**—6 per cent.

§ 460. **Florida**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Sunday, Jan. 1, 19, Feb. 22, April 26, June 3, July 4, first Monday in September, second Friday in October (Farmer's Day), general election day, Thanksgiving Day, Nov. 11 (Liberty Day), Dec. 25, Good Friday, and Shrove Tuesday in cities or towns having carnival associations. Whenever any of these days fall on a Sunday, the following Monday is to be observed. All bills, notes and checks falling due on these days are presentable the succeeding day. **DAMAGES**—on foreign protested bills, 5 per cent. **LEGAL INTEREST**—8 per cent. **ACTION ON NOTES**—limited to 5 years.

§ 461. **Georgia**—**INDORSER**—anyone indorsing or transferring a negotiable instrument may limit their responsibility by express restrictions. Every transferer of a negotiable instrument warrants, unless otherwise agreed by the parties, that he is the lawful holder, and that the instrument is genuine. If there are several indorsers each is liable to subsequent ones, or the indorser will not be held liable thereon; but it shall not be necessary to protest in order to bind indorsers, except, when a paper is made payable on its face at a bank or banker's office, or when it is discounted at a bank or banker's office, or when it is left at a bank or banker's office for collection. Damages on bills of exchange payable out of this state and in the United States, when returned protested for nonacceptance or nonpayment, the holder

shall be entitled to recover of the drawer and indorsers in the first case and the acceptor also in the latter case, in addition to the principal, interest and protest fees, 5 per cent damages on the principal. If without the United States, 10 per cent. The indorser may be sued in the same action, and in the same county with the maker, or drawer, or acceptor. The holder of a negotiable instrument receiving the same before due, without notice of any defect or defense, shall be protected from any defenses set up by the maker, acceptor or indorser, except *non est factum*, gambling or immoral and illegal considerations, or fraud in its procurement. **PROTEST AND NOTICE**—when bills of exchange and promissory notes are made for negotiation or intended to be negotiated at a chartered bank, and are not paid at maturity, notice of nonpayment and of the protest for nonpayment or nonacceptance must be given to the indorsers within a reasonable time, either personally or by post (if the residence of the indorser be known). **DAYS OF GRACE**—abolished. **HOLIDAYS**—Jan. 1, 19, Feb. 22, April 26, June 3, July 4, Dec. 25, first Monday in September, Thanksgiving Day or any other declared by the law of Georgia to be a public holiday, shall as regards the presenting for payment or acceptance, and the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes, be treated and considered as the first day of the week, called Sunday, and as public holidays; such bills, checks and notes, otherwise presentable on said days, shall be deemed to be presentable on the secular or business day thereafter. Paper payable on demand is due immediately. When no time is specified for the payment of a bill or order, it is due as soon as presented and accepted. **DAMAGES**—on bills payable outside the state, protested, 5 per cent; outside the United States, 10 per cent in addition to principal, interest and protest fees. **LEGAL INTEREST**—7 per cent; may permit 8 per cent in writing. **ACTION ON NOTES**—limited to 6 years.

§ 462. **Hawaiian Islands**—**HOLIDAYS**—Jan. 1, Feb. 22, May 30, June 11, July 4, first Monday in September, Dec. 25. **DAYS OF GRACE**—three allowed in all bills. If they fall on Sunday, then only two days. **LEGAL INTEREST**—6 per cent; on written contract 1 per cent per month is permitted.

§ 463. **Idaho**—See Uniform Negotiable Instruments Law. **PRESENTMENT FOR ACCEPTANCE**—must be made, where the bill is payable after sight or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or where the bill expressly stipulates that it shall be presented for acceptance; or where the bill is drawn payable elsewhere than at the residence or place of business of the drawee. In no other case is presentment for acceptance necessary in order to render any party to the bill liable. **PROTEST**—may be made by a notary public; or by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. Must be made on the day of its dishonor unless delay is excused as provided for by the law. Protest must be made where the bill is dishonored unless drawn pay-

able at the place of business or residence of some person other than the drawee. Where dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no other presentment for payment to, or demand on, the drawee is necessary. A bill protested for nonacceptance may be protested for nonpayment. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the delay ceases the bill must be protested with reasonable diligence. NOTICE—of dishonor must be given to the drawer and to each indorser; those to whom it is not given are discharged. It may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given. DAYS OF GRACE—abolished. HOLIDAYS—Sunday, Jan. 1, Feb. 22, May 30, June 15, July 4, first Monday in September, Oct. 12, Dec. 25, election days throughout the state, Thanksgiving or fast days appointed by the President or governor. Any act of a secular nature falling upon these days may be performed upon the next business day. LEGAL INTEREST—7 per cent; permit 10 per cent on written contract. ACTION ON NOTES—limited to 5 years.

§ 464. Illinois—See Uniform Negotiable Instruments Law. HOLIDAYS—the first day of January, New Year's Day; twenty-second day of February, Washington's Birthday; thirtieth day of May, Decoration Day; Fourth of July, Declaration Day; the twelfth day of October; twenty-fifth day of December, Christmas Day; first Monday of September, Labor Day; twelfth day of February, Lincoln's birthday; first day of each week, Sunday; any day appointed by the governor of the state or the President of the United States, as a day of fast, or Thanksgiving; Saturday, from 12 o'clock noon to midnight in cities of 200,000 are declared legal holidays. All notices falling due or maturing on these days shall be deemed as due on the day following, and when two or more of these days come together, or immediately succeed each other, then upon the day following the last of such days. DAYS OF GRACE—abolished. MONEY NOTES—the rights of the lawful holders of promissory notes payable in money, and the liabilities of all the parties to or upon said notes shall be made the same as that of like parties to inland bills of exchange according to the custom of merchants. Every assignor of every other note, bond, bill or other instrument in writing shall be liable to the action of the assignee or lawful holder thereof, if such assignee or lawful holder shall have used due diligence by the institution and prosecution of a suit against the maker thereof, for the recovery of the money or property due thereon, or damages in lieu thereof. But if the institution of such suit would have been unavailing, or the maker had absconded or resided without or had left the state when such instrument became due, such assignee or holder may recover against the assignee as if due diligence by suit

had been used. Persons severally liable upon bills of exchange or promissory notes, payable in money, may all, or any of them severally, be included in the same suit at the option of the plaintiff, and judgment rendered in said suit shall be without prejudice to the rights of the several defendants as between themselves. **LEGAL INTEREST**—5 per cent; permit 7 per cent in writing. **ACTION ON NOTES**—limited to 10 years.

§ 465. **Indiana**—See Uniform Negotiable Instruments Law. **DAYS OF GRACE**—abolished. **HOLIDAYS**—Sunday, Jan. 1, July 4, Dec. 25, Thanksgiving Day, Feb. 12, 22, May 30, first Monday in September, Oct. 12, general, national or state election days. When legal holiday comes on Sunday, day following is observed. **ATTORNEY'S FEES**—agreements as to attorney's fees depending upon conditions as set forth in any bill of exchange, acceptance, draft, or other written evidence of indebtedness, are illegal and void. **DAMAGES**—on protest bills drawn or negotiated in this state, on persons in other states, 5 per cent. Outside the United States, 10 per cent. Interest from date of protest. If upon notice of protest and demand, the principal is paid, the cost of protest only to be charged. Holder must have given a valuable consideration. Damages do not apply to notes discounted at bank and protested for nonpayment. **LEGAL INTEREST**—6 per cent; permit 8 in writing. **ACTION ON NOTES**—limited to 10 years. On any bill drawn or negotiated in this state, and payable at any place without the state, but in regard to which it shall appear that it was not to be presented for acceptance or payment at that place, if means were provided for its discharge within the state, no damages or charges for protest shall be allowed. The holder of any note or bill of exchange, negotiable by the law merchant or by the law of this state, may institute one suit against the whole or any number of the parties liable to such holder, but shall not, at the same term of court, institute more than one suit on said note or bill; provided, that no judgment shall be rendered in such suit against any maker of such note, drawer or acceptor of such bill unless suit is brought in the county where one or more of such makers, drawers or acceptors reside at the time such suit is begun.

§ 466. **Iowa**—See Uniform Negotiable Instruments Law. **DAYS OF GRACE**—abolished, only demand may be made on any of the three days following maturity. **HOLIDAYS**—Sunday, Jan. 1, Feb. 22, May 30, July 4, first Monday in September, Thanksgiving Day, Dec. 25, general election day. Bills of exchange, checks, promissory notes and any bank or mercantile paper falling due on these days are due on the succeeding day. **LEGAL INTEREST**—6 per cent; permit 8 per cent in writing. **ACTION ON NOTES**—limited to 10 years.

§ 467. **Kansas**—See Uniform Negotiable Instruments Law. **DAYS OF GRACE**—abolished. **HOLIDAYS**—Sunday, July 4, Dec. 25, Jan. 1, Feb. 22, May 30, Thanksgiving Day and the first Monday in September, are legal holidays. If any of these fall upon a Sunday, the day

succeeding will be observed. **LEGAL INTEREST**—6 per cent, but parties may stipulate not to exceed 10 per cent. **ACTION ON NOTES**—limited to 5 years.

§ 468. **Kentucky**—See Uniform Negotiable Instruments Law. **DAYS OF GRACE**—abolished. **HOLIDAYS**—Jan. 1, Feb. 12, 22, May 30, July 4, first Monday in September, Oct. 12, Dec. 25, Thanksgiving Day, and shall be treated as Sunday. If any of these fall on a Sunday, the day following shall be observed. All notes, bills, drafts, checks, etc., falling due on these days may be presented for acceptance and payment, and other action, on the Saturday previous. **LEGAL INTEREST**—6 per cent. **ACTION ON NOTES**—limited to 5 years.

§ 469. **Louisiana**—See Uniform Negotiable Instruments Law. No obligations for the payment of money, made within this state, shall be received as evidence of a debt when the whole sum shall be expressed in figures, unless the same shall be accompanied by proof that it was given for the sum expressed. The cents may be in figures. **PROTEST**—New Orleans notaries protest throughout the parish. If no notary can be found, protest may be made in the presence of two witnesses, residents of the parish, they to certify and subscribe to same. Notaries in New Orleans can appoint deputies to assist them, notary to be responsible for their acts. The certificate to state demand, manner, circumstances, manner of service of notice, etc. Same to be evidence of the facts stated. **NOTICE**—of protest to be mailed to parties residing elsewhere may be addressed to the place indicated on the bill or note, if no other address is known. **DAYS OF GRACE**—abolished. **HOLIDAYS**—Jan. 1, 8, Feb. 22, Mardi Gras, in New Orleans, July 4, Dec. 25, Sunday, June 3, Nov. 1, Thanksgiving Day (as designated by the President), first Monday in September, Oct. 12, Saturday after 12 o'clock in cities and towns over 10,000, and Good Friday. Bills falling due on these days shall be deemed due the following business day. **DAMAGES**—on protested bills—if drawn and payable in foreign countries, \$10 per hundred; if drawn and payable in any other state in the United States, \$5 per hundred. Damages are in lieu of interest, protest, and all other charges, but the holder shall be entitled to demand and recover lawful interest and damages from the time of protest. If the amount of the bill is expressed in United States money, the rate of exchange has no consideration. **LEGAL INTEREST**—5 per cent.

§ 470. **Maine**—See Uniform Negotiable Instruments Law. **DAYS OF GRACE**—are abolished. **HOLIDAYS**—Sunday, Thanksgiving Day, Jan. 1, Feb. 22, April 19, May 30, July 4, Dec. 25, first Monday in September, and Saturday after 12 o'clock. Any note, draft, check or bill of exchange falling due on these days shall be payable or presentable on the succeeding secular or business day. **LEGAL INTEREST**—6 per cent. **ACTION ON NOTES**—limited to 5 years, witnessed notes to 20 years.

§ 471. **Maryland**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Jan. 1, Feb. 22, July 4, Dec. 25, Good Friday, general and congressional election days throughout the state, May 30, Thanksgiving Day. Any of these days falling on a Sunday, the day following shall be observed. All bills, notes, drafts and checks due or presentable on these days shall be deemed presentable the day preceding. Saturday afternoon is a legal holiday for the City of Annapolis. All negotiable paper falling due or protested on that day will be deemed due the following business day. **DAMAGES**—on a bill of exchange drawn in this state on persons in other states, protested 8 per cent, with costs of protest and legal interest from protest. An indorser paying same can recover with interest. On persons in foreign countries, 15 per cent on the principal, with protest costs and legal interest from protest. **LEGAL INTEREST**—6 per cent. **ACTION ON NOTES**—limited to 6 years.

§ 472. **Massachusetts**—See Uniform Negotiable Instruments Law. **DAYS OF GRACE**—are allowed on bills of exchange, and drafts payable in the state at sight only. **HOLIDAYS**—Christmas Day, Thanksgiving Day, Feb. 22, May 30, July 4, first Monday of September, April 19. When these occur on Sunday, the following day is a legal holiday. Promissory notes, checks, drafts or bills of exchange falling due on Sunday or a legal holiday shall be payable and presentable on the next succeeding business day, except those payable on demand may be presented before 12 o'clock on Saturday when that entire day is not a holiday. **DAMAGES**—on a protested bill drawn or indorsed within the state and payable beyond the limits of the United States, 5 per cent at current rate of exchange at time of demand, with interest from date of protest, in full for all damages, charges and expenses. If payable in Maine, New Hampshire, Vermont, Rhode Island, Connecticut or New York, 2 per cent; if in New Jersey, Pennsylvania, Maryland or Delaware, 3 per cent; if in Virginia, West Virginia, North Carolina, South Carolina or Georgia, or in the District of Columbia, 4 per cent; if in any other state, 5 per cent. The rate of damages on a sum of money not less than \$100, payable not less than 75 miles distant from the place where drawn or indorsed, and not accepted, shall be 1 per cent in addition to the principle and its interest. **LEGAL INTEREST**—6 per cent; permit 7 per cent. **ACTION ON NOTES**—limited to 6 years.

§ 473. **Michigan**—See Uniform Negotiable Instruments Law. **DAYS OF GRACE**—abolished. **HOLIDAYS**—Jan. 1, Feb. 12, 22, May 30, July 4, first Monday in September, Dec. 25, Thanksgiving Day, Saturday after 12 noon, election days. Any of these days falling on Sunday, the following Monday shall be observed. Notes, bills of exchange, or checks falling due on these days shall be deemed due on the next succeeding secular day. Saturday unless a whole holiday deemed a secular or business day. **LEGAL INTEREST**—5 per cent; permit 7 per cent in writing. **ACTION ON NOTES**—limited to 6 years.

§ 474. **Minnesota**—See Uniform Negotiable Instruments Law. **DAYS OF GRACE**—abolished. **HOLIDAYS**—Sunday, Thanksgiving Day, first Monday in September, election day the first Tuesday after the first Monday of November in each even-numbered year. Good Friday, Nov. 11, Dec. 25, Jan. 1, Feb. 12, 22, July 4, May 30, or the following day when either of the last six occur on Sunday. **DAMAGES**—on bills of exchange drawn or indorsed in this state, and payable without the United States, protested, 10 per cent, together with interest from time of protest. If payable in the United States, 5 per cent, with legal interest, costs and charges. Due notice being given in both. **LEGAL INTEREST**—6 per cent; permit 10 per cent in writing. **ACTION ON NOTES**—limited to 6 years.

§ 475. **Mississippi**—See Uniform Negotiable Instruments Law. **PROTESTS**—bills of exchange and indorsed notes may be protested by any notary public, justice of the peace, mayor of a city, town or village, or by the clerk of a circuit or chancery court. Immediately after protest, the officer shall give notice in writing to each party protested against. **NOTICE**—may be served by mail directed to the party at his known or usual place of abode or business. The officer shall deliver to the holder a copy of his protest, signed and verified by oath. **DAYS OF GRACE**—abolished. **HOLIDAYS**—Jan. 1, 19, Feb. 22, April 26, June 3, July 4, first Monday in September, Thanksgiving Day, Dec. 25. When a bill or note should be presented for acceptance or payment, according to its terms, on a Sunday or legal holiday, it shall be presented on the day next before the day on which by its terms it is presentable, as shall not be one of the days herein specified, but such provision does not apply to negotiable instruments. **DAMAGES**—on bills of exchange, drawn upon any person, or body in the United States, and out of this state, and protested for nonacceptance, 5 per centum on the sum drawn for, and interest and principal. If payable out of the United States, 10 per centum, with interest. Holder is in all cases entitled to costs and charges. Domestic bills, drawn and payable in this state, for \$20 or more, shall be protested for nonacceptance or for nonpayment same as foreign bills. No damages to accrue, they shall be subject to and governed by the customs and usages of foreign bills. **LEGAL INTEREST**—6 per cent; permit 10 in writing. **ACTION ON NOTES**—limited to 6 years.

§ 476. **Missouri**—See Uniform Negotiable Instruments Law. **DAYS OF GRACE**—not allowed. **HOLIDAYS**—Jan. 1, Feb. 22, May 30, July 4, first Monday in September, a general state election day, Thanksgiving Day, Dec. 25. If any fall on Sunday, the following Monday. Negotiable instruments falling due or presentable on these days for acceptance or payment, giving notice if for dishonor, shall be due or presentable the next succeeding day. **DAMAGES**—on bills drawn or negotiated in the state on persons in the state and protested, 4 per cent; on persons in other states, 10 per cent; on persons in other countries, 20 per cent. No damages allowed if bill is paid with interest

and protest charges within 20 days after dishonor. Damages are in lieu of protest and other charges and expenses incurred previous to or at the time of giving notice. **LEGAL INTEREST**—6 per cent; permit 8 per cent in writing. **ACTION ON NOTES**—limited to 10 years.

§ 477. **Montana**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Sunday, Jan. 1, Feb. 22, May 30, July 4, first Monday of September, Oct. 12, Dec. 25, election day throughout the state, Thanksgiving Day. If any fall on Sunday, the following Monday to be observed. Contracts falling due on these days may be performed the next business day. **LEGAL INTEREST**—8 per cent; permit any rate in writing. **ACTION ON NOTES**—limited to 8 years.

§ 478. **Nebraska**—See Uniform Negotiable Instruments Law. **DAYS OF GRACE**—abolished. **LEGAL HOLIDAYS**—Jan. 1, Feb. 22, April 22, first Monday in September, Oct. 12, Dec. 25, May 30, July 4, and Thanksgiving Day. When they occur on Sunday, the day following. **LEGAL INTEREST**—7 per cent; permit 10 per cent in writing.

§ 479. **Nevada**—See Uniform Negotiable Instruments Law. **DAYS OF GRACE**—abolished. Three are allowed on all bills or drafts, except those payable on sight. Holidays coming within these days shall be treated as one of such days. **HOLIDAYS**—Jan. 1, Feb. 22, July 4, Thanksgiving Day, Dec. 25. Bills and notes falling due on these days shall be due and payable on the day previous. **LEGAL INTEREST**—7 per cent; permit any rate in writing. **ACTION ON NOTES**—limited to 6 years.

§ 480. **New Hampshire**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Thanksgiving, fast day, Labor Day, Oct. 12, day on which biennial elections are held, Christmas, July 4, Feb. 22, May 30. **DAYS OF GRACE**—abolished. **LEGAL INTEREST**—6 per cent.

§ 481. **New Jersey**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Jan. 1, Feb. 12, 22, Good Friday, May 30, July 4, first Monday of September, Oct. 12, Dec. 25, any general state election day, Thanksgiving Day, and Saturday from 12 o'clock noon to 12 o'clock midnight. Bills, notes and checks presentable for acceptance, or payment on these days, shall be presentable on the secular day succeeding, and on the half holiday, shall be presentable before 12 o'clock noon of the same day, provided that for the protesting or otherwise holding liable parties to any bill, note or check, not paid before 12 o'clock on Saturday, demand may be made and notice of protest or dishonor given on the next succeeding business day; provided further, that the party receiving such for collection shall not be deemed negligent or liable. Any of these days falling on Sunday, the next succeeding day shall be observed; paper due on that day shall be deemed due the next business day. **LEGAL INTEREST**—6 per cent. **ACTION ON NOTES**—limited to 6 years.

§ 482. **New Mexico**—See Uniform Negotiable Instruments Law.

PROMISES—to pay are assignable by indorsement. An assignee has a right of action in his own name, subject to any set-off of the maker or debtor before notice of the assignment. The assignor may discharge himself from liability by specifying in the assignment that the same is made without recourse. **DAYS OF GRACE**—abolished. **LEGAL HOLIDAYS**—July 4, Dec. 25, Jan. 1, Oct. 12, Thanksgiving Day. Paper due on Sunday, or a legal holiday shall be due the next business day. **DAMAGES**—on nonaccepted or nonpayment bills of exchange, drawn or indorsed in this state, when recoverable: If drawn outside the United States 12 per cent; in the United States 6 per cent; from time of protest. **LEGAL INTEREST**—6 per cent; permit 12 per cent in writing. **ACTION ON NOTES**—limited to 6 years.

§ 483. **New York**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Jan 1, Feb. 12, 22, May 30, July 4, first Monday of September, Oct. 12, Dec. 25. If any are Sunday, then the day thereafter. Each general election day and Thanksgiving Day. The term half holiday includes from noon to midnight of each Saturday not a holiday. **LEGAL INTEREST**—6 per cent. **ACTION ON NOTES**—limited to 6 years. Notes given for "Patent Rights" or for farm produce "Speculation" must be so marked on their face, if not, it is a misdemeanor to handle or deal in them. Bonds with coupons, not intended to circulate as money in New York, not registered, may be issued, having on them, that they are the property of such holder and the money is payable only to him, his legal representatives or assigns, unless they are transferred in blank, payable to bearer, or order, with assignor's residence added.

§ 484. **North Carolina**—See sec. 458, Uniform Negotiable Instruments Law. **HOLIDAYS**—Jan. 1, 19, Feb. 22, April 12, May 10, 20, July 4, first Monday in September, Nov. 11, general election days, Thanksgiving Day, Dec. 25; any of which falling on Sunday, the Monday following shall be observed. Papers due on such Sunday, or holiday, payable on the day succeeding. **LEGAL INTEREST**—6 per cent. **ACTION ON NOTES**—limited to 3 years.

§ 485. **North Dakota**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Sunday, Jan. 1, Feb. 12, 22, July 4, first Monday in September, Oct. 12, Dec. 25, May 30, Thanksgiving Day, state election day throughout the state. If any of these fall on Sunday, then the Monday following. Acts of a secular nature may be performed upon the day following. **DAMAGES**—on foreign bills of exchange, drawn upon any person in this state, \$2 on each \$100; on persons out of this state, but in the states of Nebraska, Iowa, Minnesota, South Dakota, Wisconsin, Illinois, Missouri and Montana, \$3 on each \$100; if on a person in any of the other states, \$5 on \$100; if on a person outside the United States, \$10 on \$100; with interest from notice of dishonor. **LEGAL INTEREST**—7 per cent; cannot exceed 12 per cent. **ACTION ON NOTES**—limited to 6 years.

§ 486. **Ohio**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Jan. 1, July 4, Dec. 25, Feb. 12, 22, May 30, Thanksgiving Day, first Monday in September, Oct. 12, shall be considered as Sunday for presenting and protesting all negotiable paper. If these days occur on a Sunday, the succeeding Monday shall be so observed. **LEGAL INTEREST**—6 per cent; permit 8 per cent in writing. **ACTION ON NOTES**—limited to 15 years.

§ 487. **Oklahoma**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Sunday, Jan. 1, Feb. 22, July 4, Dec. 25, May 30, election day throughout the state, and Thanksgiving Day. If Jan. 1, Feb. 22, July 4 and Dec. 25 fall upon Sunday, the Monday following is holiday. A negotiable instrument falling due on these days shall be deemed due the following business day. **LEGAL INTEREST**—6 per cent; permit 10 per cent in writing. **ACTION ON NOTES**—limited to 5 years.

§ 488. **Oregon**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Sunday, Jan. 1, Feb. 12, 22, May 30, July 4, first Monday in September, Oct. 12, Nov. 11, Dec. 25, election day throughout the state, Thanksgiving Day. Any of these falling on Sunday, the Monday following shall be observed. Negotiable instruments falling due on these days shall be due and payable on the next succeeding business day. **LEGAL INTEREST**—6 per cent; permit 10 per cent in writing. **ACTION ON NOTES**—limited to 6 years.

§ 489. **Pennsylvania**—See Uniform Negotiable Instruments Law. **PRESENTMENT**—for payment to be made elsewhere than in this state, referred to only in the margin of the bill, or below the name of the drawee, shall not be so construed as to charge the indorsers for nonpayment, unless place was, at the date of the bill, the actual place of the drawee, or is expressed as such in the reference, or it appear by the protest that, upon diligent inquiry, the place could not be found. **LEGAL HOLIDAYS**—Jan. 1, Feb. 12, 22, Good Friday, May 30, July 4, first Monday of September, Oct. 12, first Tuesday after the first Monday of November, Dec. 25, Saturday after 12 o'clock, and Thanksgiving Day. Paper presentable for acceptance, payment, or protesting, or giving notice of, on these days shall be presentable or protested on the business day next succeeding except when payable at sight or on demand. If on a Saturday half holiday, shall be payable at or before 12 o'clock on that day; providing, that for the purpose of protesting or holding liable a party to a bill not paid before 12 o'clock, a demand for acceptance or payment shall not be made and notice of protest or dishonor shall not be given until the next succeeding business day. Any one receiving such paper for collection, etc., on such half holiday shall incur no liability or neglect in not presenting same. The entry, issuance, service, or execution of any writ, summons, confession of judgment, or other legal process on any holiday or half holiday designated here, shall not be prevented or invalidated, nor shall any bank be prevented from keeping its doors open for business on such after-

noon if its directors so elect. When holidays fall on Sunday, the following Monday shall be observed. DAMAGES—bills, etc., returned protested are entitled to damages above the principal and protest charges from time of notice and demand. In the United States, 5 per cent, except California, New Mexico and Oregon; there 10 per cent. In Asia, Africa or Pacific Islands, 20 per cent. In Mexico, Spanish main, West Indies or Atlantic islands, east coast of South America, or Europe, 10 per cent. On west coast of South America, 15 per cent. Any other part of the world, 10 per cent. In lieu of interest and charges other than protest, to the time of notice. Rate of exchange same as at time of protest. LEGAL INTEREST—6 per cent.

§ 490. **Philippine Islands**—HOLIDAYS—Sunday, Jan. 1, Feb. 22, May 30, July 4, Holy Week (Thursday and Friday), Aug. 13, Thanksgiving Day, Dec. 25, 30. Paper falling due on these days is due the previous day. If it is a holiday, then the previous day to that. If falls on Sunday, then the day succeeding.

§ 491. **Porto Rico**—HOLIDAYS—Sunday, Jan. 1, Feb. 22, March 22, Good Friday, May 30, July 4, 25, first Monday in September, Dec. 25, Thanksgiving Day. When these fall on Sunday, the following day is to be observed. Bills, notes and checks to be presented for acceptance or payment on the following secular day.

§ 492. **Rhode Island**—See Uniform Negotiable Instruments Law. DAYS OF GRACE—three allowed on sight drafts. HOLIDAYS—Jan. 1, Feb. 22, second Friday in May, May 30, July 4, first Monday of September, Oct. 12, Dec. 25, Tuesday after the first Monday of November in every second year after 1896, Thanksgiving Day. When either of the said days fall on Sunday, then the day following it. Bills, notes, drafts, or other evidences of indebtedness due and payable on such holidays to be made on the business day next following. In default of payment, same may be protested and such protest shall be valid. Saturday is a holiday after 12 o'clock noon. This shall not apply to checks or demand drafts presented before 12 o'clock noon on Saturday. LEGAL INTEREST—6 per cent, unless a different rate is expressly stipulated. DAMAGES—any foreign bill of exchange drawn or indorsed within this state, returned protested, shall be subject to 10 per cent damages and charges for protest, and 6 per cent interest from the date of protest. Action may be brought for the principal, damages, interest and charges of protest against the drawers and indorsers, jointly or severally.

§ 493. **South Carolina**—See Uniform Negotiable Instruments Law. DAYS OF GRACE—abolished. HOLIDAYS—National Thanksgiving Day, general election days, Jan. 1, 19, Feb. 22, May 10, June 3, July 4, Dec. 25, first Monday in September. In Charleston county add Saturday afternoons after 12 o'clock. Paper payable on Sunday or a legal holiday shall be payable the next day, provided it be not a Sunday or

legal holiday; if so, then on the first day thereafter. Any holiday falling on Sunday, the following Monday to be observed. DAMAGES—on protested bills on parties out of this state, 10 per cent. In any other part of North America or the West Indies, 12½ per cent. Any other part of the world 15 per cent, and all charges incidental with interest until paid. Bills and notes drawn for less than \$1.00 payable to order or bearer are void. LEGAL INTEREST—7 per cent. ACTION ON NOTES—limited to 6 years.

§ 494. **South Dakota**—See Uniform Negotiable Instruments Law. DAYS OF GRACE—abolished. HOLIDAYS—Sunday, Jan. 1, Feb. 12, 22, July 4, Dec. 25, May 30, first Monday in September, Thanksgiving Day, election days. If Feb. 12, 22 or July 4, fall on Sunday, the Monday following is holiday. Bills falling due on these days must be presented on the following business day. LEGAL INTEREST—7 per cent; permit 12 per cent in writing. ACTION ON NOTES—limited to 6 years.

§ 495. **Tennessee**—See Uniform Negotiable Instruments Law. HOLIDAYS—Jan. 1, 19, Feb. 22, July 4, Dec. 25, Good Friday, Decoration Day (May 30), Memorial Day (June 3), first Monday in September; when these days fall on Sunday, then the following Monday; also Thanksgiving Day, all days set apart for county, state or national elections throughout the state. Negotiable paper falling due on these days shall be due and payable the first business day following. DAMAGES—on protested foreign bills, 3 per cent if drawn upon person or corporation in another state; 15 per cent if drawn upon person in other place in North America or West Indies; 20 per cent in any other part of the world. LEGAL INTEREST—6 per cent. ACTION ON NOTES—limited to 6 years.

§ 496. **Texas**—PROTEST AND NOTICE—the holder of a bill or note may fix the liability, also, by protesting and giving notice according to the usage and custom of merchants by a notary public. The notary shall set forth, in his protest and record, a full statement of the facts, specifying demand, sum of money, of whom, when and where; also serve notices of protest on the drawers and indorsers made liable, and note in his protest record, with time, place and manner of service. Protest or copy of the record certified under his hand and seal shall be admitted as evidence in all courts of this state. DAYS OF GRACE—three allowed on all bills and notes negotiable. HOLIDAYS—Jan. 1, Feb. 22, March 2, April 21, June 3, July 4, first Monday in September, Oct. 12, Dec. 25, Thanksgiving Day, and general state election day. Same are treated as Sunday for presentation, protesting and giving notice of on bills of exchange, notes, etc. All exemptions and requirements usual on legal holidays may be observed. If a holiday falls on a Sunday, the day following shall be observed, but bills of exchange, etc., may be presented on the preceding Saturday and proceeded on accordingly. DAMAGES—on protested

bills—the holder of any protested bill, etc., drawn by a merchant within the limits of this state upon his agent or factor, living outside this state shall, after having fixed the liability of the drawer or indorser, be entitled to recover 10 per cent damages on the amount of the bill, with interest and cost of suit accruing. LIABILITY—of parties may be fixed without protest and notice, by the holder instituting suit after the right of action accrues. A bill not accepted renders the drawer immediately liable. Assignee may sue in his own name. LEGAL INTEREST—6 per cent; permit 10 per cent in writing. ACTION ON NOTES—limited to 4 years.

§ 497. Utah—See Uniform Negotiable Instruments Law. HOLIDAYS—Sunday, Jan. 1, Feb. 12, 22, May 30, July 4, 24, Oct. 12, Dec. 25, April 15, first Monday in September, Thanksgiving Day. When such days fall on Sunday, the following Monday shall be observed. In case Sunday and the holiday come together, said note or bill must be presented on the day next succeeding said Sunday or holiday. LEGAL INTEREST—8 per cent, permit 12 per cent in writing. ACTION ON NOTES—limited to 6 years.

§ 498. Vermont—See Uniform Negotiable Instruments Law. DEMAND NOTE—is overdue sixty days after date. No presentment shall charge the indorsers unless made on or before sixty days. PROTEST—a negotiable promissory note, inland bill of exchange, draft, or check, may be officially protested for nonpayment by a notary public and notice given by him to the parties to the instrument. The certificate of a notary, under his hand and official seal, is evidence of notice. NOTICE—by mail to the nearest post office of the party, prepaid, is sufficient. DAYS OF GRACE—abolished. HOLIDAYS—Jan. 1, July 4, Aug. 16, May 30, Dec. 25, Feb. 22, first Monday in September, Oct. 12, Thanksgiving Day, shall, for presenting for acceptance or payment, protesting, and giving notice of the dishonor of bills, etc., be considered like Sunday. Any of these days falling on Sunday, the preceding Saturday shall, for such purposes, be considered like Sunday. Falling due on Sunday or a legal holiday, it shall be considered as due on the following Monday. SUIT—the indorsee or holder may maintain in his own name. The indorser shall have the same right to pay as the principal, and upon maturity may tender the true amount. If the holder refuse, he is discharged from liability. LEGAL INTEREST—6 per cent. ACTION ON NOTES—limited to 6 years.

§ 499. Virginia—See Uniform Negotiable Instruments Law. HOLIDAYS—Jan. 1, 19, Feb. 22, June 3, July 4, Dec. 25, Thanksgiving Day, or a day of fasting and prayer appointed by the President or the governor of the state, May 30, first Monday in September, Tuesday after first Monday in November, Saturday afternoons. Negotiable instruments presentable for acceptance or payment on these days shall be presentable on the preceding business day. Such holidays falling on Sunday, the Monday following shall be observed as a holiday, and

negotiable instruments falling due shall be presentable on the next business day. Notice of dishonor need not be given until the first day thereafter which is not a Sunday or such public holiday. Action may be maintained upon any note or writing by which there is a promise, undertaking, or obligation to pay money, if signed by the party who is charged thereby, or his agent, and in an action of assumpsit, on any such note or writing, the rule as to averment and proof of consideration, shall be the same as in any action of debt thereon. **LEGAL INTEREST**—6 per cent. **ACTION ON NOTES**—limited to 5 years.

§ 500. **Washington**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Sunday, Jan. 1, Feb. 22, Thanksgiving Day, Memorial Day, general election day, July 4, Dec. 25, Saturday from 12 o'clock noon to Sunday at midnight. Treated as Sundays for the presentation for acceptance or payment or protest of bills, notes, checks, etc. The other holidays do not apply to bills and notes. **LEGAL INTEREST**—6 per cent; permit 12 per cent in writing. **ACTION ON NOTES**—limited to 6 years.

§ 501. **West Virginia**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Jan. 1, Feb. 12, 22, July 4, May 30, Dec. 25, first Monday in September. If any of these fall on Sunday, the following Monday is to be observed. Any bills, notes or checks due on these days are payable on the following business day. **LEGAL INTEREST**—6 per cent. **ACTION ON NOTES**—limited to 10 years.

§ 502. **Wisconsin**—See Uniform Negotiable Instruments Law (few exceptions). **HOLIDAYS**—Sunday, Jan. 1, Feb. 22, May 30, July 4, Labor Day, Thanksgiving Day, general election day, Dec. 25. If any of these fall on Sunday, the following Monday is observed. Notes, drafts and bills falling due on these days are payable on the succeeding business day. **FOREIGN BILLS**—dishonored by mere acceptance must be protested for nonacceptance and where such bill, not previously so dishonored, is dishonored by nonpayment, it must be protested for nonpayment. If not so protested the drawer and indorsers are discharged. If not a foreign bill on appearance protest in case of dishonor is unnecessary. Notice of protest must be given in writing to the drawer, maker and each indorser of. Every protested bill or note must have the notary's certificate attached, under his seal and hand, stating presentment, demand, refusal and protest for nonacceptance or nonpayment. Contents of notice giving time, manner of service, post office and reputed residence of each person notified by mail, and a record must be kept of same with description of instrument protested. **LEGAL INTEREST**—6 per cent; permit 10 per cent in writing. **ACTION ON NOTES**—limited to 6 years.

§ 503. **Wyoming**—See Uniform Negotiable Instruments Law. **HOLIDAYS**—Jan. 1, Feb. 12, 22, May 30, July 4, Dec. 25, Thanksgiving Day and general election days. If any fall on Sunday, the Monday following

shall be observed. LEGAL INTEREST—8 per cent; permit 12 per cent in writing. ACTION ON NOTES—limited to 5 years.

§ 504. Canada—HOLIDAYS—Sunday, New Year's, Good Friday, Easter Monday, Victoria Day, Dominion Day, Christmas, Thanksgiving Day, Labor Day, any day appointed by the lieutenant governor. (Some Provinces: Epiphany, Annunciation, Ascension, Corpus Christi, St. Peter and St. Paul's, All Saint's Day, Conception Day, Ash Wednesday.) PROTEST AND NOTICES—notaries perform these duties.

CHAPTER VI.

COMMISSIONER OF DEEDS.

§ 505. **Commissioners of Deeds.**—A commissioner is a person holding a commission authorizing him to discharge certain duties. A commissioner of deeds is one authorized to take acknowledgments or proofs of written instruments in a foreign state or country. Most of the states of this country have a statute authorizing the governor of its state to appoint a number of residents of other states and countries to act in the taking of acknowledgments or proofs of written instruments, taking depositions of witnesses, taking affidavits and the oaths of persons resident in that state or country for use in the state making the appointment. They are, usually, appointed for a term of years, or during good behavior. They are required to take an oath for faithfulness in office, to have an official seal with which all their acts are to be attested, together with their signature. This seal to contain their name and the name of the state for which they are appointed, together with the word “commissioner.” They are usually required to pay a fee for the appointment to the secretary of the state making the appointment, and are often restricted as to the fee they charge for their acts. Before acting they are required to file with the secretary of the state appointing them an impression of their official seal, together with their signature, which is kept on file for comparing instruments signed by them.

§ 506. **Acknowledgments.**—Acknowledgments must be taken by the officers prescribed by statute. Where a deed is acknowledged only before a commissioner of deeds and not before some officer authorized by the laws of the state from whence the commission issues to take an acknowledgment and privy examination, such acknowledgment is void.¹ If an acknowledgment is taken by a notary public, who is not the of-

¹ Wood v. Lewey, 153 N. C. 401,
69 S. E. 268.

ficer prescribed by statute for performing such duty, it is immaterial that the notary is also a commissioner and an attorney, and that he is authorized in either of the last two named capacities to take such proof. The act, having been performed in the capacity of notary, will be invalid.²

A certificate of acknowledgment made by a commissioner of another state need not be under seal. The want of a date to the acknowledgment would not vitiate it, if the acknowledgment was sufficient when the deed was offered in evidence.³ In Iowa, the certificate of a commissioner of deeds was held not sufficiently authenticated by seal, when the word "Iowa" was written in the body of the seal instead of impressed on the paper, as required by statute.⁴ A deed acknowledged by a commissioner of deeds residing out of the state requires no authentication of his official character.⁵

Commissioners of affidavits regularly appointed have full authority to take acknowledgments within the state for which they are appointed, of lands lying in North Carolina, and, when necessary, to take the privy examination of a married woman, who is a grantor, joining her husband in the execution. When the certificate of such commissioner is adjudged correct by the clerk of the superior court of the county in which the land lies, and the deed is registered upon the order of the latter, the registration will be deemed valid for all purposes.⁶ An acknowledgment before a commissioner of deeds in one county cannot be read in evidence in another county without the certificate of the clerk of the former county.⁷

§ 507. Administration of Oaths; Affidavits.—A commissioner of deeds for Illinois residing in another state can administer oaths lawfully required in Illinois.⁸ A petition in bankruptcy has been held properly verified, when the verification was taken before a commissioner of deeds.⁹

² Partridge v. Mechanics' Nat. Bank, 77 N. J. Eq. 208, 77 Atl. 410.

³ Irving v. Brownell, 11 Ill. 402.

⁴ Gage v. Dubuque & P. R. Co., 11 Iowa 310, 77 Am. Dec. 145.

⁵ Vance v. Schuyler, 1 Gilm. (Ill.) 160.

⁶ James Meyer Buggy Co. v. Pegram, 102 N. C. 540, 9 S. E. 412.

⁷ Wood v. Weiant, 1 N. Y. 77; Borst v. Empie, 5 N. Y. 33.

⁸ Kassing v. Griffith, 86 Ill. 265.

⁹ In re Morse, 210 Fed. 900.

STATUTORY REQUIREMENTS.

§ 508. **Alabama**—APPOINTMENT—by the governor. TERM—four years. POWERS—to take and certify depositions, acknowledgments, proof of conveyance and wills, and affidavits, for record in this state by persons outside.

§ 509. **Alaska**—APPOINTMENT—by the governor. TERM—four years. COMMISSION FEE—\$5.00. POWERS—to take proofs or acknowledgments of conveyances or other written instruments, acknowledgments of satisfaction of any judgment or decree of a court in this district, affidavits or depositions, any other duties conferred or imposed by the Alaska code or statute. SEAL—provide himself with an official seal. OATH—for the faithful performance of his official duties to be taken before a judicial officer of his county, city or town, and file same, together with an impression of his official seal, in the office of the secretary of Alaska territory.

§ 510. **Arizona**—APPOINTMENT—by the governor. COMMISSION—fee—\$2.50. TERM—four years. POWER—within his state or country. To administer and certify oaths, take depositions, affidavits and acknowledgments. SEAL—provide an official seal having engraved upon it the words "Commissioner of Deeds for the State of Arizona" and the name of his state. All his official acts to be authenticated with the same. His acts have the same force and effect as those executed in this state by an officer so authorized. OATH—of office to be taken and subscribed to before an officer authorized in his state or country to take oaths for faithful performance of his duties. Same to be filed with the secretary of state within six months after taking. FEES—to be the same as those prescribed for notaries.

§ 511. **Arkansas**—APPOINTMENT—by the governor. Fee—\$5.00. TERM—at the pleasure of the governor. POWER—to administer oaths, take depositions, affidavits and acknowledgments. The same, when certified by them, to be effectual in law as by any other authorized officers. OATH—of office to be taken and subscribed to before some officer authorized to administer oaths in their state, before acting. The oath, signature and an impression of his official seal to be filed with the secretary of this state within six months after appointment. SEAL—to be provided to authenticate his official acts. FEES—prescribed generally. See Notaries.

§ 512. **California**—APPOINTMENT—by the governor. Fee—\$5.00. TERM—four years. POWER—within his state and country to administer oaths, take and certify depositions, affidavits and acknowledgments. SEAL—to be procured having engraved upon it the coat of arms of this state, the words "Commissioner of Deeds for the State of California" and the name of his state. All his official acts to be authenticated with it. His acts have the same effect as if done and certified in this state by any officer so authorized. OATH—of office must be filed with the

secretary of this state within six months after the appointment. FEES—to be the same as those prescribed for notaries public. Names of commissioners to be published three times at the seat of government of the state in some weekly paper.

§ 513. Colorado—APPOINTMENT—by the governor. Fee—\$5.00. Commission—\$1.00 O. and B. TERM—at the pleasure of the governor. POWERS—to take acknowledgments, depositions, affidavits and administer oaths. SEAL—to be procured to authenticate their acts with name of state on it. OATH—of office to be taken and subscribed to before a judge or clerk of a court of record where he resides. Oath, impression of his seal, and signature to be deposited with the secretary of this state within six months after appointment. His acts under official seal have the same effect as any officer so authorized. FEES—to be the same as notaries. Noting for protest, 50c; protest and record, 75c; notice of protest, each, 50c; certificate and seal, 50c; acknowledgments, 50c; additional, 25c; taking depositions, 15c per 100 words; affidavit, 25c; other fees same as a justice of the peace.

§ 514. Connecticut—APPOINTED—by the governor. Fee—\$10.00. TERM—five years. POWER—to take acknowledgments, oaths, etc., examine witnesses, take depositions. OATH—of office to be filed with the secretary of state. SEAL—official seal to be procured to authenticate their acts with. FEES—taking acknowledgments, signing or issuing subpoenas, 25c; taking bond, recognizance, affidavit or administering oath, 10c. See Notaries.

§ 515. Delaware—APPOINTED—by the governor. Fee—\$10.00. TERM—seven years. JURISDICTION—for the state in which they reside or are appointed. SEAL—to be procured; same requisites as notary's seal. POWER—to administer oaths, take depositions, affidavits, acknowledgments and the private examination of any married woman, party to a deed. OATH—of office signed and certified to be filed with the county recorder. FEES—same as notaries.

§ 516. District of Columbia—APPOINTMENT—by the President. No fee required. TERM—five years. POWER—to take acknowledgments of deeds for conveyance of property in the district, to administer oaths, take depositions in cases pending in the courts of the district. SEAL—his acts properly attested by hand and seal of office have full faith and credit.

§ 517. Florida—APPOINTMENT—by governor. Fee—\$7.00. TERM—during pleasure of the governor. POWER—to take acknowledgments for conveyances in this state, any contracts, letters of attorney or other writings under seal to be used or recorded in this state, to administer oaths. OATH—of office to be taken before a notary or justice of the peace in his city or county for faithful performance of all duties, same to be filed with the secretary of this state. SEAL—to be procured to authenticate his acts.

§ 518. Georgia—APPOINTMENT—by the governor. Fee—\$5.00. TERM—no statute. POWERS—to take and certify acknowledgments or proofs of conveyances, take depositions, powers of attorney, wills, affidavits, oaths and other writings requiring attestation in this state. OATH—of office to be taken before any one authorized to administer oaths and filed with the secretary of state. SEAL—of office to be procured to authenticate his official acts. FEES—regulated by the state where resident.

§ 519. Idaho—APPOINTMENT—by the governor. Fee—\$5.00. TERM—four years. POWER—to take depositions, affidavits, acknowledgments and oaths, within his state. SEAL—of office to be procured for authenticating his official acts with, having on it "Commissioner for the State of Idaho," his name. His oath of office to be filed with the secretary of this state within six months. FEES—same as allowed notaries.

§ 520. Illinois—APPOINTMENT—by the governor. Not to exceed five for any city or county and one for every 10,000 inhabitants in cities, states and territories. Fee—\$6.00 for commission and instructions. TERM—four years. OATH—to be taken before a court of record where resident. POWERS—take release of dower, acknowledgments, contracts, assignments, transfers, letters of attorney, satisfaction of judgments or mortgage, or any instrument for record in the state. To certify to the official character, seal or signature of any other officer within their district authorized to take acknowledgments or oaths; take depositions. His properly executed acts to have same effect as any officer in this state so authorized. SEAL—to be procured having on it "A Commissioner for the State of Illinois," together with the name of state and county, town or city of his appointment. Within six months of his appointment he shall file with the secretary of this state his oath, signature and impression of his seal. Failure to qualify within six months forfeits appointment. No one can act before qualifying. FEES—see notaries.

§ 521. Indiana—APPOINTMENT—by the governor. Fee—\$5.00. TERM—four years. POWERS—to take depositions and affidavits to be used in the courts of this state, acknowledge deeds and other documents for record in this state, same to be attested with their official seal. OATH—of office to be subscribed to before some officer authorized to administer it, same to be filed in the office of the secretary of this state. SEAL—to procure an official seal to authenticate his acts with. FEES—certificate and seal, 50c; depositions, etc., per 100 words, 10c; administering oath, 10c; protest, 50c; notice of, 25c; acknowledgments and seal, 25c; per 100 words, copying protests, 10c.

§ 522. Iowa—APPOINTMENT—by the governor. Fee—\$5.00. TERM—three years. POWERS—to take depositions, affidavits, acknowledgments and oaths. SEAL—to procure same having on it "Commissioner for Iowa," his surname at length and at least the initials of

his Christian name and state. Same with signature received as evidence in this state. OATH—for faithfulness to be taken before a judge or clerk of a court of record or an authorized commissioner for Iowa, under the hand and official seal of party taking, same with signature added and impression of the seal of the appointee to be sent to the secretary of this state. Commissioners of like nature appointed by other states for this state are invested with the authority of justices of the peace to issue subpoenas for witnesses before them, and can administer oaths when permitted by such state. False swearing is subject to the perjury laws of this state. Such commissioner shall file a certificate of his authority and appointment with the secretary of this state. FEES—same as allowed in his state for like services.

§ 523. **Kansas**—APPOINTMENT—by the governor. Fee—\$1.00. TERM—during pleasure of the governor. POWERS—to administer oaths, take depositions, affidavits and acknowledgments of deeds, etc., powers of attorney and instruments for record in this state, same to be effectual in law. OATH—of office to be taken and subscribed to before a justice of the peace or other officer authorized to administer oaths. Same to be filed with the secretary of this state; also his signature and impression of official seal. SEAL—to be procured to authenticate his official acts with. FEES—no statute.

§ 524. **Kentucky**—APPOINTMENT—by the governor. Fee—\$5.00. TERM—two years. AFFIDAVIT—to well and truly perform his duties, to be made before an officer authorized to administer oaths, same to be transmitted for filing to the secretary of this state. POWERS—to take proofs, acknowledgments (except wills), oaths and depositions for record in this state. All his acts certified under his hand and seal are entitled to record. SEAL—of office to be procured to authenticate his acts. FEES—making a deed, \$1.50; taking deposition, \$2.00; more than one for same party, each, \$1.00. Not to exceed \$3.00 per day against each party. Subpoenas and other papers same as circuit court clerks. Court may allow for extras.

§ 525. **Louisiana**—APPOINTED—by the governor. Fee—\$5.00. TERM—four years. ELIGIBILITY—of known integrity and ability, resident in that state. POWERS—to take depositions by virtue of a commission, to take acknowledgments and any writings to be used in this state, oaths or affirmations, etc., to attest signatures, official capacity and official acts of any judge, justice of the peace or other public officer holding a commission or acting under authority of the state in which he resides. His power extends only to parties resident of his state, except in taking testimony under a commission. Their commission to conform to the laws of this state. Their signature and official seal to be attached. They can act as notaries in the state where appointed. SEAL—of office to be provided bearing name, office and state. Their signature and impression of seal to be deposited with the secretary of this state. American ministers, charge d'affaires,

consuls general, consuls, vice consuls and commercial agents in any foreign country can act and use their own seals of office. Notaries of other states may act, with proof of their signature.

§ 526. **Maine**—APPOINTMENT—by the governor. Fee—\$5.00. A justice of the supreme court or the governor of the state of the applicant must sign the application. TERM—at the governor's pleasure. POWERS—to take acknowledgments and certify same under his official seal, to administer oaths, to take and certify depositions. OATH—of office to be taken and subscribed to before a judge or clerk of the superior court of his state or country. Same with impression of his official seal to be filed with the secretary of this state. False certificates of acknowledgments, or signatures, shall be punished as forgeries. SEAL—to be provided to authenticate his acts. FEES—no statute regarding.

§ 527. **Maryland**—APPOINTMENT—by the governor, with the senate's consent, biennially. Fee—\$10.00. TERM—two years. OATH—of office to be taken before a justice of the peace or notary public in the city or county of his residence. SEAL—he shall provide an official seal for authenticating all his official acts. An impression of his seal with his oath of office to be filed with the secretary of this state. POWERS—after qualifying he can administer oaths for use in this state, take acknowledgments, and other instruments for record in this state. The record of his appointment with the governor's certificate under the great seal of the state shall be evidence of appointment.

§ 528. **Massachusetts**—APPOINTMENT—by the governor, with consent of council. Fee—\$5.00. TERM—three years. OATH—of office to be taken and subscribed to within three months after the appointment, before a justice of the peace or other magistrate of the city or county where he resides or before a clerk of a court of record of his county. SEAL—to be provided with the words "Commissioner for Massachusetts," and the name of the state, city or county in which he resides. An impression of such seal, with his oath of office and signature, to be filed with the secretary of the commonwealth. POWERS—to administer oaths, take affidavits, depositions, acknowledgments in his state for record in this state, certified under his official seal. FOREIGN COMMISSIONERS—oath of office to be taken before a judge or clerk of a court of record of his country or before a resident United States minister or consul. The same, with an impression of his official seal, shall be filed with the secretary of this commonwealth. SPECIAL COMMISSIONERS—appointed and qualified shall have the same powers as justices of the peace in administering oaths, taking depositions, affidavits and acknowledgments, and to issue summonses. Women who are twenty-one years of age may be appointed by the governor with consent of the council. TERM—seven years. FEES—oath and certificate, \$1.00; acknowledgments, \$1.00; depositions, per page, 50c; affidavit, 50c; oath on deposition, \$1.00; other fees same as a justice of the peace. Court may add more for depositions. Sealing and

sending depositions, \$1.00. Officers must make a detailed statement of fees or forfeit three times the amount paid. Fee list to be posted in his office. Fee to be indorsed on each writ.

§ 529. **Michigan**—APPOINTED—by the governor on written application with recommendation of governor, or judge of court of record where applicant resides, or other satisfactory evidence of fitness. Fee—\$3.00. TERM—five years. POWERS—to take acknowledgment of deeds, mortgages or other conveyances of lands, etc., lying in this state, any contract, power of attorney or other writings under seal to be used or recorded in this state, to administer oaths. Same must be under his seal of office. OATH—for the faithful discharge of the duties of the office to be furnished, subscribed to before any party authorized to administer oaths where applicant resides. Same to be filed with the secretary of this state. FEES—no statute regulating. See notaries.

§ 530. **Minnesota**—APPOINTMENT—by the governor. TERM—pleasure of the governor. OATH—to be taken and subscribed to. BOND—not required. POWERS—to take acknowledgments, oaths, etc. SEAL—to be attached to papers to be effective. [Note: The statute governing appointment of commissioners (Gen. St. 1894, §§ 5646-5649) was repealed by Rev. Laws 1905, § 5518. The officer is referred to in the statute naming officers who may take acknowledgments (Gen. St. 1913, § 5744, subd. 3). It is believed that the power of appointment exists because of a general statute authorizing the governor to appoint necessary officers (Gen. St. 1913, § 58), and the oath is required by a similar statute applicable to officers in general (§ 5733).]—Ed.

§ 531. **Mississippi**—APPOINTMENT—by the governor. Fee—\$5.00. TERM—four years. POWER—to administer oaths, certify acknowledgments, take and certify depositions and affidavits, for use or record in this state, same to be as effectual as if done in this state by an authorized officer. OATH—for faithfulness in office to be taken and subscribed to before an officer authorized to administer oaths. FEES—deposition, certificate and oath, 50c; acknowledgments, 25c; deposition, per 100 words, 10c.

[Note: A similar situation exists in this state as in Minnesota, the late revision of statutes containing no specific statute governing appointment of commissioners.—Ed.]

§ 532. **Missouri**—APPOINTMENT—by the governor. Fee—\$7.50. TERM—the pleasure of the governor. POWERS—take relinquishments of dower, administer oaths, take depositions, acknowledgments or proof of any writings under seal or note to be used and recorded in this state. If in a foreign country, they may certify to the official character, signature or seal of any officer in their district authorized to take acknowledgments or oaths, administer oaths and take and certify depositions. OATH—of office to be taken before a judge or clerk of a court of record where he resides, to well and faithfully execute and perform all the duties of his office, under and by virtue of the laws of the state of Mis-

souri. The oath, impression of his official seal and signature to be filed with the secretary of this state within six months after appointment. FEES—the same as clerks of courts of record. Taking acknowledgments, 50c; administering oaths, 25c; certificate and seal, 50c; affidavits, certificate, 15c; summons, 50c; witness fees, per day, \$1.00; outside county, per day, \$1.25; travel, per mile, 5c; oaths and affidavits, 25c; subpoenas, 25c; making deed, \$1.00.

§ 533. **Montana**—APPOINTMENT—by the governor, for five years, subject to removal. Fee—\$5.00. POWER—to act in the state or county where appointed. To certify and take depositions, acknowledgments, oaths and affidavits. SEAL—to provide and keep an official seal and authenticate their acts with, having engraved on it, their name, "Commissioner of Deeds for the State of Montana," and the name of their state. OATH—their official oath and impression of their seal to be filed with the secretary of this state within six months from their appointment. FEES—same as notaries public.

§ 534. **Nebraska**—APPOINTMENT—by the governor. Fee—\$1.00. TERM—four years. DUTIES—to take acknowledgments, administer oaths, take depositions. OATH—to take oath of office before an officer authorized to take oaths. SEAL—to procure a seal of office having on his name, "A Commissioner for Nebraska," with the name of his city, county and state. The oath, impression of seal and signature to be filed with the secretary of state. His acts must be certified to by the secretary of state before admitted to record or read in evidence. To act only within his place of appointment, and specify the day, city, town or county where act was done. Must personally know or have identified persons making acknowledgments.

§ 535. **Nevada**—APPOINTMENT—by the governor. Fee—\$10.00. TERM—four years, unless sooner removed. POWER—to administer oaths, take depositions and affidavits and acknowledgments, to be used in this state, to certify same under his hand and seal. Same have the same effect as if done by a notary. OATH—of office to be taken and filed with secretary of state within six months before acting. SEAL—to procure seal and authenticate his acts therewith. FEES—affidavit, deposition, etc., per folio, 30c; oath or affirmation, 25c; sealing an instrument, 50c; acknowledgments or proofs, with seal and certificate, \$1.00; each additional signature, 50c.

§ 536. **New Hampshire**—APPOINTMENT—by the governor, with the advice of the council. Fee—\$1.00. TERM—five years. OATH—to be taken and subscribed to before a judge of a court of record for faithful performance of duties of the office before acting, same to be filed with secretary of state within six months. POWERS—to administer oaths, take depositions and affidavits, notify parties of the time and place thereof, take acknowledgments for use or record in this state, in the same manner and with the same effect as a justice of the peace of this state. Commissioners of other states with like powers

in this state to be used in other states or appointed by the supreme court or justices thereof, shall have power to administer oaths and affirmations, to issue summons to witnesses, to proceed against same for neglect to answer summons or testify, and in all proceedings under his commission that is vested in justices of the peace in like cases. FEES—controlled by the courts.

§ 537. New Jersey—APPOINTED—by senate and general assembly in this state. Fee—\$10.00, and \$1.00 for recording seal. ELIGIBILITY—competent. POWERS—to take acknowledgments; may take outside his own state or county. TERM—begins on the first day of April; five years. REMOVAL—from township, town, city or borough, voids the appointment. OATH—of office to be taken and subscribed to before the county clerk within two months, before acting. FEES—the same as notaries (see § 67). FOREIGN COMMISSIONERS—APPOINTED—by the governor. Fee—\$10.00. TERM—three years. Removable at pleasure of governor. REMOVAL—of residence from his state vitiates his commission. Malconduct or overcharging of fees incurs removal from office. Resignations permitted. POWERS—to take acknowledgments or proofs, to administer oaths, affirmations and affidavits. SEAL—to provide themselves with an official seal to attest their acts with. An impression of same with their oath of office to be sent to the secretary of this state. FEES—for acknowledgments or proof, \$1.00; each oath, 25c. OATH—of office to be taken and subscribed to before the mayor or other chief magistrate of the city where resident or before a judge of the supreme or superior court of his state, to faithfully perform the duties of his office. This before acting. Commissioners for New York and Pennsylvania may reside in this state but not to act here. Women are eligible to the appointment.

§ 538. New Mexico—APPOINTMENT—by the governor. Fee—\$5.00. TERM—at the governor's pleasure. POWERS—to take depositions, affidavits, acknowledgments or proofs of written instruments, and to administer oaths. The same certified under his hand and appropriate seal to be as effectual in law for all intents and purposes as if done and certified by a justice of the peace in this state. OATH—to be taken and subscribed to before some judge or clerk of a court of record where he is to exercise his appointment, for faithfulness in office, before acting, same to be certified under the hand of the party taking it, and the seal of the court. The oath and certificate, with the commissioner's signature and an impression of his official seal on paper and on wax or wafer, to be filed with the secretary of the state. Same to have the same force as evidence as those of a notary public. FEES—allowed to be the same as those allowed for like services by the laws of his state or territory. Commissioners of other states and territories appointed in this state with like authority, are invested with the authority of a justice of the peace, to issue subpoenas requiring the attendance of witnesses before them to give their testimony by deposition or affidavit, can administer oaths in any matter required or permitted by the law of their state or

territory. False swearing is subject to the penal laws of this territory relating to perjury. SEAL—of office to be procured to authenticate their acts with.

§ 539. **New York**—APPOINTMENT—in the cities of the state—by the city common council. TERM—two years. Number to be appointed, to be determined at the end of every two years in cities of 300,000 to 550,000. POWERS—to take acknowledgment of all written instruments. APPOINTMENT—in other states and countries—by the governor. ELIGIBILITY—to reside where appointed. TERM—four years, unless sooner revoked. COMMISSION—fee—\$5.00. OATH—of office to be taken, if in the United States, before a justice of the peace, or some other magistrate. If abroad, before a person authorized by the laws of this state to administer oaths in such country, or before a clerk or judge of a court of record. SEAL—of office to be provided having on his name and the words “Commissioner of deeds for the State of New York,” and the name of the city or county, and the state or country from which appointed; shall file a clear impression of such seal, his signature and oath certified by the officer before whom taken, in the office of the secretary of state. Upon receipt of same, he shall receive instructions and forms. POWERS—within the place of his appointment to take acknowledgments, or proofs of written instruments, except a bill of exchange, promissory note, or will. To take oaths, same to be admitted as evidence or for record. In foreign countries, to certify to existence of patent, record or other document in country. **NEW YORK CITY**—APPOINTMENT—by the board of aldermen. TERM—two years; not required to be approved by the mayor or city council. OATH—of office shall be taken before the commissioner of deeds clerk. DUTIES—to take acknowledgments. In counties where his signature and seal have been recorded, his acts may be performed without his official seal. He is liable to parties injured for any misconduct in office. FEES—if for another state, not to exceed four times the amount allowed by the laws of such state. In no case for an acknowledgment or an oath over \$1.00. **IN GREAT BRITAIN**—taking acknowledgments and issuing certificates, four shillings, administering an oath, one shilling. **IN FRANCE OR OTHER FOREIGN COUNTRY**—administering an oath, and certifying, one franc and twenty-five centimes. Taking an acknowledgment or certifying to the correctness of a copy of a patent, etc., five francs. Foreign commissioners must have their acts certified by the secretary of the state of their appointment. Commissioner of deeds appointed by common council of cities, population not less than 300,000 nor more than 550,000, expires on 31st day of December of the even number year, next after appointment to be made in November. TERM—two years, notification to be made by county clerk. OATH—of office to be taken within ten days before county clerk. Fee—\$1.00.

§ 540. **North Carolina**—APPOINTMENT—by the governor. TERM—two years. POWERS—to take acknowledgments or proofs of deeds and other instruments in writing, to take the private examination of

married women to certify same, and it shall have the same force and effect as if taken in this state. To administer oaths or affirmations, take depositions and examine witnesses. OATH—to be taken and subscribed before a justice of the peace in the city or county where he resides, well and faithfully to execute the duties of his office, before acting, and the same to be filed with the secretary of this state, who will record and issue the commission and certify the appointment to the clerks of the superior courts, who shall record the same., Clerks of courts of records in other states have power as commissioners of affidavits and deeds. The clerk of the superior court, having jurisdiction, shall adjudge deed or instrument acknowledged or proved by other state commissioners. FEES—affidavit, 40 cents; affixing seal, 25 cents; acknowledgments, 25 cents.

§ 541. North Dakota—APPOINTMENT—by the governor. Fee—\$10.00. TERM—six years. POWERS—to take acknowledgments and proofs of instruments, administer oaths, take and certify depositions and affidavits. SEAL—to be procured for authenticating his official acts having engraved on it “Commissioner of Deeds for the State of North Dakota,” also the name of his state or country, with the date his commission expires. Acts to be as effectual in law as those of any officer so authorized in this state, when certified under his seal of office. OATH—of office to be taken and subscribed to before a judge or clerk of a court of record or officer having a seal in his state or country, well and faithfully to perform all the duties of his office by virtue of the laws of this state. File with signature and an impression of seal with the secretary of this state. BOND—for \$500, with a surety company as security; to be filed with the secretary of this state. FEES—same as notaries in his state.

§ 542. Ohio—APPOINTMENT—by the governor. Fee—\$3.00. TERM—three years. ELIGIBILITY—governor to determine. AUTHORITY—to take affidavits, depositions, and acknowledgments for record in Ohio. SEAL—to be procured for authenticating his acts. OATH—of office to be taken and subscribed to before a judge of a court of record or some Ohio commissioner within the state or country. Same with signature thereto and an impression of his seal of office shall be transmitted to the governor and filed in the office of the secretary of state. FEES—swearing witnesses, 25 cents; deposition, each 100 words, and certificate or affidavit, 10 cents; authenticating, sealing up, and directing same, \$1.00; taking acknowledgment, \$2.00; affidavits, \$1.00. LIABILITY—excess of these charges, dishonesty or unfaithfulness in office subjects him to removal by the governor and public notice.

§ 543. Oklahoma—The law authorizing appointments of commissioners has been eliminated as obsolete.

§ 544. Oregon—APPOINTMENT—by the governor. Fee—\$2.50. TERM—four years. Jurisdiction where appointed for. POWERS—to take acknowledgments, affidavits, depositions, etc. SEAL—of office to

be provided, having the arms of this state, in its center, surrounded by "Commissioner for Oregon," with his state name. OATH—to be taken and subscribed to before a judicial officer. Oath and impression of his seal to be filed with the secretary of state.

§ 545. **Pennsylvania**—APPOINTMENT—by the governor. Fee—\$5.00. TERM—five years. Women may be appointed. When they marry must report name to the governor so their certificate can be changed. POWERS—to take acknowledgments, oaths, for use in this state, and certify same under their hand and seal. Oath of office to be taken before a justice of the peace of his county. Same to be filed with the secretary of this state, all before acting. FEES—acknowledgments, \$1.00. FOREIGN COMMISSIONERS—TERM—at governor's pleasure. OATH—to be taken before a judge or clerk of a court of record, where resident. SEAL—to be procured to authenticate their official acts. Impression of seal, signature and oath to be filed with the secretary of this state. FEES—same as other commissioners.

§ 546. **Porto Rico**—APPOINTMENT—by the governor. TERM—four years. Fee—\$1.00. OATH—to be taken before a justice of the peace or other magistrate of the city, town or clerk of court of record of state or territory within three months or forfeit the office. SEAL—to be procured having engraved on it, his name, "Commissioner for Porto Rico," name of the state or territory, city and county, where he resides. An impression of his seal, oath of office and signature to be filed in the office of the secretary of the island. DUTIES AND POWERS—to administer oaths, take depositions, affidavits and acknowledgments for record in Porto Rico, same, under his official seal, shall be as effectual as if taken on the island. FEES—taking oaths, \$1.00; acknowledgments, \$1.00; depositions or affidavits, per page, 50c; administering oath to each deponent, \$1.00; authenticating, sealing up and directing each deposition, \$1.00. Court may allow further fees if necessary. Other fees same as notary publics. Documents may be written in English where notary and parties know the language.

§ 547. **Rhode Island**—APPOINTMENT—by the governor. Fee—\$2.00. TERM—five years. OATH—of office to be taken before an authorized officer, and filed with the secretary of state before acting, within six months. POWERS—to take depositions, acknowledgments, affidavits and oaths for record in this state. SEAL—to provide an official seal with which to authenticate his acts. REMOVAL—after notice and opportunity for defense, by governor. FEES—no statute.

§ 548. **South Carolina**—APPOINTMENT—by the governor. Fee—\$3.25. TERM—at the governor's pleasure. OATH—of office to be taken and subscribed to, before acting; any authorized officer in his city or county can take it. Same with the commission, to be filed with the secretary of state, who shall give notice of such in one or more gazettes of the state. POWER—to take renunciation of dower, acknowledgments, or any writing under seal, to be used or recorded in

this state, when certified under his hand and seal. Also power to administer oaths. Verifications of pleadings, affidavits and proofs of claims made before notaries public in other states shall have the same effect as if made before a commissioner of deeds for this state. To use his official seal. SEAL—of office to be provided for authenticating his official acts. FEES—same as notaries.

§ 549. **South Dakota**—APPOINTMENT—by the governor. Fee—\$5.00. TERM—at the governor's pleasure. POWERS—take acknowledgments of deeds and other instruments for record in this state, oaths, and depositions. OATH—of office to be taken and subscribed to before a judge or clerk of a court of record having a seal. File with the state secretary, also copy of seal. SEAL—to be procured having on it "Commissioner of South Dakota," his surname, and at least the initials of his Christian name, the name of the state commissioned for. To authenticate his official acts with same. FEES—no statute regulating.

§ 550. **Tennessee**—APPOINTMENT—by the governor. Fee—\$10.00. TERM—four years. POWERS—to take acknowledgments, depositions, affidavits, powers of attorney, probate deeds, etc., for record in the state. Same to conform to the Tennessee statutes. Some doubt seems to exist as to the power of a commissioner to take the acknowledgment and privy examination of a married woman to an instrument executed by her and her husband, that such examination must be by a court of equity or a commissioner appointed by such court. OATH—of office to be taken. SEAL—of office to be procured to authenticate official acts with.

§ 551. **Texas**—APPOINTMENT—by the governor, on the recommendation of the executive of the state or country of applicant. Fee—\$1.00. TERM—two years, or his successor qualified. POWERS—to take acknowledgments and proofs, oaths, depositions, same to be as effective as if made in this state. OATH—of office to be taken before a clerk of a court of record of his county, subscribed and sworn to under the hand and official seal of the clerk, and filed with the secretary of this state. SEAL—of office to be procured to authenticate all his official acts with, having in the center "A star of five points" and "Commissioner of the State of Texas" engraved thereon. His acts have no effect unless so certified. FEES—not regulated.

§ 552. **Utah**—APPOINTMENT—by the governor. Fee—\$5.00. TERM—four years unless removed by governor. POWERS—to administer oaths, take depositions, affidavits and acknowledgments, for use or record in this state. The same when certified under his hand and seal are as effectual in law for all intents and purposes as if done by an authorized officer in the state. OATH—to be taken and subscribed to before a judge or clerk of a court of record, in the state of the commissioner, certified by the person taking, under his hand and seal of the court. The oath and impression of his seal to be filed with the secretary of this state within six months. SEAL—of office to be pro-

cured, upon which must be engraved his name, the words "Commissioner of Deeds for the State of Utah," and the name of the state for which he is commissioned. All his official acts must be authenticated with this seal. Commissioners for other states residing in this state shall file with the secretary of state a certified copy of their commission, together with a statement of their place of residence. FEES—the same as notaries.

§ 553. Vermont—APPOINTMENT—by the governor. Fee—\$5.00. The applicant must have the indorsement of the governor or a member of the supreme bench of his state. TERM—five years. POWERS—to take depositions, affidavits, oaths and acknowledgments, for use in this state. OATH—of office to be taken before a magistrate of his locality. BOND—required for \$500, approved by the governor, before acting, and filed with the secretary of state. SEAL—to procure an official seal with which to authenticate their official acts. FEES—allowed, not regulated by statute.

§ 554. Virginia—APPOINTMENT—by the governor. Fee—\$5.00. TERM—at the pleasure of the governor for two years. OATH—of office required, can be taken before a justice of the peace or other commissioner or one authorized to take oaths. SEAL—of office to be procured to authenticate their acts with. POWERS—to take acknowledgments, depositions, oaths.

§ 555. Washington—APPOINTMENT—by the governor. Fee—\$5.00. TERM—four years. POWERS—to administer oaths, take depositions and affidavits, to be used in this state, also acknowledgments for record. OATH—before acting, they shall subscribe to an oath before clerk of court of record or any officer having an official seal and so authorized, a certificate of which, to be filed with the secretary of state. SEAL—of office to be procured having on it his name and the words "Commissioner of Deeds for the State of Washington," and the name of the state for which he is commissioned, with date of expiration of his commission.

§ 556. West Virginia—APPOINTMENT—by the governor. Fee—\$5.00. TERM—four years, governor to notify the legislature. POWERS—to administer oaths, take affidavits, depositions and acknowledgments for use in this state. SEAL—to be procured designating his name, residence, and the words (either full or intelligently abbreviated) "Commissioner for West Virginia," and name of his state. An impression of his seal and signature to be filed with the secretary of this state. His certificate to be authenticated by his signature and official seal. OATH—for faithfulness in office to be taken before a justice of the peace, notary, court or judge of the county in which he resides, or where his duties are to be performed, and certified to by the officer. Not to act until qualified, under penalty, and to qualify within sixty days, otherwise office is vacant. FEES—see notaries.

§ 557. **Wisconsin**—APPOINTMENT—by the governor. Fee—\$5.00. TERM—four years. OATH—of office to be taken before a judge or clerk of a court of record where the applicant resides. SEAL—of office to be procured with which he shall authenticate his acts. An impression of same, with his oath of office and statement of post office address to be filed with the secretary of this state. POWERS—to take acknowledgments, depositions and oaths, certify same with his hand and official seal. FEES—allowed, same as other officers.

§ 558. **Wyoming**—APPOINTMENT—by the governor. Fee—\$5.00. TERM—at the governor's pleasure. POWER—to take depositions, acknowledgments, affidavits and oaths, for use in this state. SEAL—of office to be procured, with which all his official acts shall be authenticated. OATH—of office to be taken and subscribed to before an authorized officer having an official seal, where applicant resides, same with signature and official seal impression to be filed with the secretary of this state. Must state in each certificate the date of expiration of his commission. FEES—allowed, same as notaries.

§ 559. **Canada**—APPOINTMENT—by the governor in council. Fee—\$10.00. DUTIES—to take acknowledgments, releases of dower, attestations under oath, affidavits.

CHAPTER VII.

FORMS.

§ 560. The following forms are presented as a guide. It is the substance which the statutes require more than a literal copy.

Observe carefully the preceding chapters for the full requirements, as to witnesses, seals, personal appearance and separate examinations for acknowledgments, deeds, etc.

Depositions vary so much for each case that it is hardly necessary to enumerate for each State. Also affidavits.

Follow carefully the requirements of the chapter on Negotiable Instruments and the statutory requirements of each State.

ACKNOWLEDGMENTS.

FORMS RECOMMENDED BY THE AMERICAN BAR ASSOCIATION.

No. 1. In CASE OF NATURAL PERSONS.

On this day of, 19.., before me personally appeared, to me known to be the person.. described in and who executed the foregoing instrument, and acknowledged that ..he.. executed the same as free act and deed.

No. 2. ACTING BY ATTORNEY.

On this day of, 19.., before me personally appeared, to me known to be the person who executed the foregoing instrument in behalf of, and acknowledged that ..he.. executed the same as the free act and deed of said

No. 3. A CORPORATION.

On this day of, 19.., before me appeared, to me personally known, who, being by me duly sworn (or affirmed) did say that he is the president (or other officer) of (describe corporation), and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its

board of directors (or trustees), and said acknowledged said instrument to be the free act and deed of said corporation (or association).

No. 4. (Alabama.) HUSBAND AND WIFE.

State of..... }
County of } ss.

I,, hereby certify that C. B. and A. B., whose names are signed to the foregoing instrument, known to me, personally appeared, and being made acquainted with the contents thereof, acknowledged the same this day to be their free act and deed, for the purposes therein expressed; said A. B., wife of the said C. B., was examined separate and apart from her husband.

Given under my hand and seal of office, this day of, A. D. 19..

No. 5. (Alabama.)

State of..... }
County of } ss.

I, M. N. (give officer's title), hereby certify that A. B., whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that being informed of the contents of the conveyance he executed the same voluntarily on the day the same bears date. Given under my hand, this day of, 19..

No. 6. (Arizona.)

State of Arizona, }
County of } ss.

This instrument was acknowledged before me, this day of 19.., by (if by a natural person or persons, here insert name or names; if by a person acting in a representative or official capacity, or as attorney in fact, then insert name of person as executor, attorney in fact, or other capacity; if by an officer or officers of a corporation then insert name or names of such officer or officers as the president or other officer of such corporation, naming it).

A.....B.....

Notary Public (or other officer).

State of Arizona, }
County of } ss.

Before me,, on this day, personally appeared, known to me (or proved to me on the oath of) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office, this day of, A. D.

My commission expires day of, A. D.

No. 7. (Arkansas.)

State of..... }
 County of } ss.

On this day of, 19.., before me, a notary public in and for said county, duly authorized by the laws of Arkansas, personally appeared C. D., to me personally known (or proved by the subscribing witnesses) to be the person whose name appears as grantor to the foregoing instrument, and stated that he executed the same for the consideration and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal, as such notary public in and for said county, on this day of, 19..

Note: Conveyance by husband and wife must state that husband acknowledges that he executed the deed for the "consideration and purposes therein mentioned and set forth" and that the wife acknowledges that she has executed it for the "purposes therein contained and set forth." The certificate of acknowledgment of the wife must show that she executed the deed "without compulsion of undue influence of her husband."—Ed.

No. 8. ACKNOWLEDGMENT BY CORPORATION.

State of Arkansas, }
 County of } ss.

On this day of, 19.., before me, a Notary Public, (or before any officer within this State or without the State, now qualified under existing law to take acknowledgments) duly commissioned, qualified and acting, within and for said County and State, appeared in person, the within named and (being the person or persons authorized by said corporation to execute such instrument, stating their respective capacities in that behalf to me personally well known, who stated that they were the and of the, a corporation, and were duly authorized in their respective capacities to execute the foregoing instrument, for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this day of, 19..

No. 9. (California.)

State of..... }
 County of } ss.

On this day of, in the year, before me (officer's name and quality of officer), personally appeared, known to me (or proved to me on the oath of)* to be the person whose name

is subscribed to the within instrument, and acknowledged to me that he (she or they) executed the same.

No. 10. CORPORATION.

The name of the president or secretary must be inserted, together with the name of the company, viz., same as above to then follow: (*) to be the president (or secretary) of the corporation who executed the within instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

No. 11. ATTORNEY IN FACT.

Begin (*) to be the person whose name is subscribed to the within instrument as the attorney in fact of, and acknowledged to me that he subscribed the name of thereto as principal, and his own name as attorney in fact.

No. 12. (Colorado.)

State of Colorado, }
County of } ss.

..... appeared before me this day of, 19.., in person and acknowledged the foregoing instrument to be his act and deed for the uses specified therein.

Witness my hand and official seal.

.....,

.....
(Title of Officer.)

The acknowledgment to the statutory form of deeds or mortgages is as follows,—

State of Colorado, }
County of } ss.

I,, in and for said County, in the State aforesaid, do hereby certify that who personally known to me to be the persons whose name subscribed to the foregoing deed, appeared before me this day in person and acknowledged that signed, sealed and delivered the said instrument of writing as free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and seal, this day of, A. D.

.....
My commission expires.....A. D.....

No. 13. (Connecticut.) BY HUSBAND AND WIFE.

State of..... }
County of } ss.

....., A. D. 19.., then and there before me,, within and for the county and State aforesaid, duly commissioned and acting as such,

personally appeared and, his wife, signers and sealers of the foregoing instrument, and severally acknowledged the same to be their free act and deed, before me.

Witness my hand and seal of office, on this day of, A. D. 19..

No. 14. (Delaware.)

State of }
.....County. } ss.

Be it remembered, that on this day of, A. D. 19.., personally came before me,, a notary public for the State of Delaware, and, his wife, parties to this indenture, known to me personally (or proved upon the oath of) to be such, and severally acknowledged this indenture to be their deed; and the said being at the same time privately examined by me, apart from her husband, acknowledged that she executed the said indenture willingly, without compulsion, or threat, or fear of her husband's displeasure.

Given under my hand and seal of office the day and year aforesaid.

No. 15. (District of Columbia.)

..... County (or city, etc.) to wit:

I,, a (official title) in and for the District of Columbia do hereby certify that, a party to a certain deed, bearing date on the day of, and hereunto annexed, appeared before me in said District, the said being personally well known to me, as (or proved by the oaths of credible witnesses before me to be) the persons.. who executed the said deed and acknowledged the same to be his (her or their) act and deed.

Given under my hand and seal this day of

....., (Seal.)

No. 16. (District of Columbia.) WIFE.

..... County (or city) to wit:

I, (officer's title), in the county aforesaid, in the State of, do hereby certify that, the wife of, party to a certain deed bearing date on the day of and hereunto annexed, personally appeared before me in the county (or city) aforesaid, the said being well known to me (or proved on the oaths of credible witnesses before me to be) the person who executed the said deed, and being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, she, the said, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and seal this day of

.....

No. 17. (Florida.)

State of..... }
County of } ss.

Before me personally came C. F., to me well known as the person who executed the foregoing deed, and acknowledged that he executed the same for the purposes therein expressed, and prays that it may be admitted to record.

In witness whereof I have hereunto set my hand and seal, this day of, A. D. 19..

No. 18. (Georgia.) MARRIED WOMAN.

I, A. B., the wife of C. D., do declare that I have freely and without any compulsion signed, sealed and delivered the above instrument of writing, passed between D. E. and C. D., and I do hereby renounce all title or claim to dower that I might claim or be entitled to, after the death of C. D., my said husband, to or out of the lands or tenements therein conveyed. In witness whereof, I have hereunto set my hand and seal.

Before me, John Smith, a notary public, personally came A. B., the wife of C. D., to me known to be the person whose signature is attached to the foregoing deed, and did declare that she did freely and voluntarily and without compulsion from her husband sign, seal and deliver the said deed for the purposes therein mentioned.

Sworn to and subscribed before me this day of, 19..

No. 19. (Hawaiian Islands.)

Territory of Hawaii }
Island of..... } ss.

On this day of A. D., personally appeared before me A B, (*) known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein set forth.

When the party is unknown to the officer but identified by a witness, insert (*) satisfactorily proved to me to be the person described in and who executed the written instrument, by the oath of C D, a credible witness for that purpose, to me known and by me duly sworn, and he the said A B acknowledged that he executed the same freely and voluntarily for the uses and purposes therein set forth.

No. 20. (Idaho.)

State of Idaho, }
County of..... } ss.

On this day of, in the year of, before me (officer's name and office) personally appeared, known to me (or proved to me on the oath of) to be the person whose name

is subscribed to the within instrument,* and acknowledged to me that he (or they) executed the same.

No. 21. CERTIFICATE OF ACKNOWLEDGMENT OF MARRIED WOMAN.

Same as above, to * adding described as a married woman and upon an examination without the hearing of her husband I made her acquainted with the contents of the instrument and thereupon she acknowledged to me that she executed the same and that she does not wish to retract such execution.

No. 22. (Illinois.)

State of..... }
County of } ss.

I,, hereby certify that,, who are each personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand seal, this day of, A. D.

No. 23. (Illinois.) PARTY PERSONALLY KNOWN TO THE OFFICER.

State of Illinois, }
County of Cook. } ss.

I, John Doe, a notary public in and for said county and State, do hereby certify that Richard Smith (and if acknowledged by wife, her name, and add "his wife"), personally known to me to be the same person.. whose name is (or are) subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he (she or they) signed, sealed and delivered the said instrument as his (her or their) free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this sixteenth day of January, A. D. 19..

JOHN DOE,

Notary Public.

No. 24. (Illinois.) PARTY NOT KNOWN.

State of Illinois, }
County of Cook. } ss.

I, John Doe, a notary public in and for said county and State, do hereby certify that Richard Smith (proved by James Jackson, the subscribing witness), who is personally known to me to be the same person

whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this sixteenth day of January, A. D. 19..

JOHN DOE,

JAMES JACKSON (Seal),

Notary Public.

Subscribing Witness.

No. 25. (Illinois.) WITH HOMESTEAD WAIVER.

State of..... }
County of } ss.

I,, a notary public in and for the said, in the State aforesaid, do hereby certify that, personally known to me to be the same person.. whose name.. subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that ..he.. signed, sealed and delivered the said instrument as free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, the day of, A. D. 19...

.....,
Notary Public.

No. 26. (Illinois.) FOR CORPORATION.

State of Illinois, }
County of } ss.

I,, a notary public in and for the county and State aforesaid, do hereby certify that, president, and, secretary of the, who are personally known to me to be the same persons whose names are subscribed to the foregoing as such president and secretary, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, and as the free and voluntary act of the said for the uses and purposes therein set forth, and caused the corporate seal of said company to be thereto attached.

Given under my hand and notarial seal, this day of, 19..

.....,
Notary Public.

No. 27. (Illinois.) ACKNOWLEDGMENT TO CHATTEL MORTGAGE BY A NONRESIDENT.

This chattel mortgage was acknowledged before me by Richard Smith, this 15th day of July, 19..

Witness my hand and seal.

JOHN DOE.

No. 28. (Indiana.)

Before me, E. F. (a judge or justice as the case may be), this day of, A. D., A. B. acknowledged the execution of the annexed deed (or mortgage).

(Signature and title.)

No. 29. IOWA.

State of }
County of } ss.

On this day of, A. D., before me personally appeared A B (or A B and C D), to me known to be the person.. named in and who executed the foregoing instrument, and acknowledged that ..he.. executed the same as (his or their) voluntary act and deed.

.....
Notary Public in and for said county.

No. 30. (Iowa.) CORPORATION.

Same as above and follow with:

On this day of, A. D., before me appeared A B, to me personally known, who, being by me duly sworn (or affirmed) did say that he is the president (or other officer) of (describe the corporation) and that the seal affixed (if they have one) to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors and said A B acknowledged said instrument to be the voluntary act and deed of said corporation.

Kansas, same as Iowa.

No. 31. (Kentucky.) MARRIED WOMAN OUT OF THE STATE.

Commonwealth (or), }
County (or) of, } solicit.

I, (title of officer), do certify that this instrument of writing from and wife,, was this day produced to me by the parties, and the contents and effect of the instrument being explained to the said by me, separately and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same, to be her act and deed and consented that the same might be recorded.

(Seal.) Given under my hand and seal of office.

If the husband join in the deed and acknowledge before the officer, his acknowledgment may be certified with that of the wife, following the word "parties," thus "which was acknowledged by the said C. D. to be his act and deed."

No. 32. (Kentucky.) MARRIED WOMAN IN THE STATE.

Officer to simply certify that it was acknowledged before him and where.

No. 33. (Louisiana.)

State of..... }
County of } ss.

Be it remembered, that on this day of, 19.., before me, a notary public in and for said county duly authorized, personally appeared A. B., to me known to be the party who executed the within instrument, and acknowledged to me that he did sign, seal and deliver the same, as his free act and deed for the uses and purposes therein stated.

In witness whereof, I have hereunto set my hand, and affixed my official seal and signature this day of, 19..

No. 34. (Maine.)

State of..... }
County of } ss.

..... day of, 19.., personally appeared C. F. and acknowledged the foregoing instrument to be his free act and deed.

.....

No. 35. (Maryland.) ACKNOWLEDGMENT.

State of Md., County, to wit:

I hereby certify, that on this day of, in the year, before the subscriber (name of official) personally appeared and (name of married woman) his wife and did each acknowledge the foregoing deed to be their respective act.

.....

.....

No. 36. (Massachusetts.) ACKNOWLEDGMENT.

State of Mass., }
County of } ss.

....., on this day of, 19.., before me personally appeared A. B., to me known to be the person.. described in and who executed the foregoing instrument, and acknowledged that ..he.. executed the same as free act and deed.

No. 37. BY ATTORNEY.

On this day of, 19.., before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of said C. D.

No. 38. CORPORATIONS.

On this day of, 19.., before me appeared A. B., to me personally known, who being by me duly sworn (or affirmed) did say that he is the president (or what officer) of (name of corporation) and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said A. B. acknowledged said instrument to be the free act and deed of said corporation.

If the corporation has no seal omit the words "the seal affixed to said instrument is the corporate seal of said corporation and that," and add, at the end of the affidavit clause, the words "and that said corporation has no corporate seal." In all cases add signature and title of the officer taking the acknowledgment.

No. 39. (Michigan.) SAME FORMS AS MASSACHUSETTS.

No. 40. (Minnesota.) SAME AS MASSACHUSETTS.

No. 41. (Mississippi.)

Caption.

Personally appeared before me, (officer's name and office), the within named A. B., who acknowledged that he signed and delivered the foregoing instrument on the day and year therein mentioned.

Given under my hand, this the day of, A. D.

No. 42. A WITNESS.

Caption.

Personally appeared before me,, C. D., one of the subscribing witnesses to the foregoing instrument, who being duly sworn, depose and saith that he saw the within named A. B., whose name is subscribed thereto, sign and deliver the same to the said E. F. (or that he heard the said A. B. acknowledge that he signed and delivered the same to the said E. F.); that he, this affiant, subscribed his name as a witness thereto in the presence of the said A. B.

In all cases add signature and title of the officer taking, and attach his official seal if he have one.

No. 43. (Mississippi, See No. 140.)

No. 44. (Missouri.) SEE MASSACHUSETTS.

No. 45. (Montana.) SEE MASSACHUSETTS.

No. 46. (Nebraska.) SEE IOWA. (Add one witness.)

No. 47. (Nevada.) ACKNOWLEDGMENT.

State of Nevada, }
 County of } ss.

On this day of, A. D., personally appeared before me (name of officer) in and for said county, A. B., known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

(The exact form is not required, the substance is.)

No. 48. (New Hampshire.) SEE MASSACHUSETTS.

No. 49. (New Jersey.)

State of..... }
 County of } ss.

Be it remembered that on this day of, 19.., before me, a notary public in and for said county, being duly authorized, personally came C. F. and M. F., his wife, who I am satisfied are the grantors in the foregoing deed, and I having made known to them the contents thereof, they each acknowledged that they signed, sealed, and delivered the same as their voluntary act and deed for the uses and purposes therein mentioned.

No. 50. (New Mexico.) SAME AS MASSACHUSETTS.

No. 51. (N. Y.) See Massachusetts for Individuals.

State of New York, }
 County of..... } ss.

On the day of, in the year, before me personally came, to me known, who, being by me duly sworn, did depose and say that he resided in; that he is the (president or other officer) of the (name of corporation), the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

(Signature and office of officer.)

If such corporation have no seal, that fact must be stated in place of the statements required respecting the seal.

No. 52. (North Carolina.)

State of..... }
County. } ss.

I, A. B. (title of officer), do hereby certify that (name of grantor, and if acknowledged by wife, her name, and add his wife), personally appeared before me this day and acknowledged the due execution of the

foregoing (or annexed) deed of conveyance (or such instrument as it is), and (if the wife is a signer) the said (here give wife's name), being by me privately examined separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same, freely and voluntarily, without fear or compulsion of her said husband, or any other person, and that she doth still voluntarily assent thereto. Witness my hand and seal (private or official), this

....., (Seal)

No. 53. (North Dakota.)

State of }
County of } ss.

On this day of, in the year, before me personally appeared, known to me (or proved to me on the oath of) to be the* person who is described in and who executed the within instrument, and acknowledged to me that he (or they) executed the same.

If a corporation add * (name of officer) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

No. 54. (Ohio.) BY HUSBAND AND WIFE.

State of }
County of } ss.

Be it remembered that on the day of, before me, a notary public in and for said county, personally appeared A. B. and C. B., his wife, the grantors in the foregoing deed, personally known to me, and acknowledged the signing and sealing of the same to be their act and deed for the purposes therein mentioned. And the said C. B., wife of the said A. B., being examined separate and apart from her husband, and the contents having been made known to her by me, declared that she did voluntarily sign and acknowledge the same and is satisfied therewith as her act and deed.

In testimony whereof, I have hereunto set my hand and affixed my official seal.

Two witnesses.

No. 55. (Oklahoma.)

State of Oklahoma, }
..... County. } ss.

Before me,, in and for said county and state, on this day of, 19.., personally appeared and, to me known to be the identical person.. who executed the within and foregoing instrument, and acknowledged to me that executed the same as free and voluntary act and deed for the uses and purposes therein set forth.

No. 56. (Oregon.)

State of Oregon, }
 County of } ss.

Before the undersigned, a justice of the peace for the precinct of, in the county and State aforesaid, personally appeared the within named A. B., and C. D., his wife, to me known to be the individuals described in and who executed the within conveyance, and the said A. B. acknowledged that he executed the same, and the said C. D., being by me examined separate and apart from her said husband, then and there acknowledged that she executed such conveyance freely and without fear or compulsion from any one, this day of, 19..

E. F., Justice of the Peace.

No. 57. (Pennsylvania.)

Corporation's power to Attorney to acknowledge for the corporation.

I hereby certify that on this day of, in the year of our Lord, before me the subscriber (title of officer) personally appeared (name of attorney) the attorney named in the foregoing (name of instrument) and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said (name of instrument) to be the act of the said (corporation's name).

Witness my hand and seal the day and year aforesaid.

No. 58.

State of }
 County of } ss.

Be it remembered that on this day of, before me, a notary public in and for said county, duly authorized, personally came C. D., and A. D., his wife, personally known (or proved) to me, and acknowledged the signing and sealing of the within instrument to be their act and deed, that the same might be recorded as such. And the said A. D., being of lawful age, was examined by me separate and apart from her husband and the contents made known to her, she declared that she did voluntarily and of her own free will and accord and as her own free act and deed, without any compulsion from her husband, deliver the same.

In witness whereof, I have hereunto set my hand and official seal, this day of, A. D.

(One witness.)

No. 59. (Rhode Island.) HUSBAND AND WIFE.

State of Rhode Island, }
 County of } ss.

In the town of, in the said county and State, on this day of, A. D. 19.., personally appeared before me the within named C. D., and acknowledged the within instrument by him signed to be his free, voluntary act and deed.

And at the same time came A. D., wife of the said C. D., being by me examined separate and apart from her husband, acknowledged and declared the said instrument by her signed, to be her free act and deed, and that she did not wish to retract it.

No. 60. (South Carolina.) MARRIED WOMAN.

State of South Carolina, }
..... County. } ss.

I, F. G. (officer's title), do hereby certify unto all whom it may concern that E. B., the wife of the within named A. B., did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named C. D., his heirs and assigns, all her interests and estate, and also all her right and claim of dower, of, in or to all and singular the premises within mentioned and released.

Given under my hand and seal, this day of, A. D.
..... (L. S.) Signed, F. G. E. B.

Official seal of officer to be attached.

No. 61. (South Dakota.)

State of South Dakota, }
County of } ss.

On this day of, in the year before me personally appeared, known to me (or proved to me on the oath of) to be the person who is described in and who executed the within instrument and acknowledged to me that he (or they) executed the same.

.....

No. 62. (Tennessee.)

State of Tennessee, }
..... County. } ss.

Personally appeared before me, clerk of the court of said county, the within named bargainer, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand, at office, this day of, 19..

No. 63. (Tennessee.) BY CORPORATION.

State of Tennessee, }
County of } ss.

Before me,, the State and county aforesaid, personally appeared, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the president (or other officer author-

ized to execute) of the, the within named bargainer, a corporation, and that he as such, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as

Witness my hand and seal, at office in this day of
Corporation seal not necessary.

No. 64. (Texas.)

State of }
County of } ss.

Before me,, on this day personally appeared, known to me (or proved to me on the oath of) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this day of,
A. D.

(Seal.)

.....

No. 65. (Utah.)

State of Utah, }
County of } ss.

On the day of, A. D., personally appeared before me,, the signer of the above instrument, who duly acknowledged to me that he executed the same.

This properly executed by an authorized officer and attached to the instrument, is sufficient.

No. 66. (Utah.) GRANTOR UNKNOWN TO OFFICER.

State of Utah, }
County of } ss.

On this day of, A. D., personally appeared before me A. B., satisfactorily proved to me to be the signer of the above instrument by the oath of C. D., a competent and credible witness for that purpose, by me duly sworn, and he, the said A. B., acknowledged that he executed the same.

No. 67. (Utah.) BY CORPORATION.

State of Utah, }
County of } ss.

On the day of, A. D., personally appeared before me A. B., who being by me duly sworn (or affirmed), did say, that he is the president (or other officer or agent) of (name corporation), and that said instrument was signed in behalf of said corporation by authority of its by-laws (or by resolution of its board of directors as

the case may be) and said A. B. acknowledged to me that said corporation executed the same.

No. 68. (Vermont.)

State of }
County of } ss.

The day of, A. D. 19.., personally appeared C. G., and A. G., his wife, to me known, and severally acknowledged the within instrument, signed and sealed, to be their free act and deed, before me.

(Two witnesses.)

No. 69. (Virginia.)

County of, to wit:

I, (officer's name and title), for the county aforesaid, in the State of, do certify that E. F., whose name is signed to the writing above, bearing date on the day of, has acknowledged the same before me in my county aforesaid. Given under my hand, this day of

No. 70. COMMISSIONER OF DEED'S CERTIFICATE.

State of }
..... } to wit.

I,, a commissioner appointed by the Governor of Virginia for the said State of, do certify that E. F., whose name is signed to the writing above, bearing date on the day of, has acknowledged the same before me, in my State aforesaid. Given under my hand, this day of, A. D. 19..

No. 71. (Washington.)

State of Washington, }
County of } ss.

I,, do hereby certify that on this day of, 19.., personally appeared before me (and his wife if she joins), to me known to be the individuals described in and who executed the within instrument, and acknowledged that ..he.. signed and sealed the same as free and voluntary act and deed, for uses and purposes therein mentioned. Given under my hand and official seal, this day of, A. D. 19..

No. 72. (Washington.) CORPORATION.

State of }
County of } ss.

On this day of, A. D., before me personally appeared, to me known to be the (name of officer of the corporation) of the corporation that executed the within and foregoing in-

strument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

.....

No. 73. (West Virginia.)

State of }
County of } ss.

I,, a commissioner, appointed by the Governor of the State of West Virginia, for the said State of, do certify that, whose name is signed to the writing above, bearing date on the day of, has this day acknowledged the same before me, in my said

Given under my hand, this day of

No. 74. (West Virginia.) CORPORATION.

State of }
County of } ss.

I,, a notary of the said County of, do certify that personally appeared before me in my said, and being by me duly sworn (or affirmed), did depose and say that he is the president of (or other officer) the corporation described in the writing above, bearing date the day of, 19.., authorized by said corporation to execute and acknowledge deeds and other writings of said corporation, and that the seal affixed to said writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said acknowledged the said writing to be the act and deed of said corporation.

If the corporation has no corporate seal, omit the words "seal affixed to said writing is the corporate seal of said corporation" and say "said corporation has no seal," and in such case omit the word "sealed" after the words "signed and," and insert in lieu of it the word "executed."

No. 75. (Wisconsin.)

State of Wisconsin, }
..... County. } ss.

Personally came before me this day of, 19.., the above (or within) named, and, his wife, to me known to be the persons who executed the foregoing (or within) instrument, and acknowledged the same.

No. 76. CERTIFICATE TO BE ATTACHED TO AN ACKNOWLEDGMENT TAKEN OUTSIDE THIS STATE.

State of }
County of } ss.

I,, clerk of the, in and for said county, which is a court of record, having a seal (or I,, the Secretary of State of State), do hereby certify that, by and before whom the foregoing acknowledgment (or proof) was taken, was, at the time of taking the same, a notary public (or other officer) residing (or authorized to act) in said county, and was duly authorized by the laws of said State (or territory) to take and certify acknowledgments or proofs of deeds in said State, and further that I am well acquainted with the handwriting of said, and that I verily believe that the signature to said certificate of acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court (or State), this day of 19..

No. 77. (Wyoming.)

State of Wyoming, }
County of } ss.

I (name of officer and title) do hereby certify that (name of grantor, if wife joins add her name, "and his wife") personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, for the uses and purposes therein set forth (if homestead is released state, including the release and waiver of the right of homestead).

CANADA.

No. 78.

I hereby certify that, personally known to me, appeared before me and acknowledged to me that, the person.. mentioned in the annexed instrument as the maker.. thereof, and whose name subscribed thereto as part that know.. the contents thereof, and that executed the same voluntarily.

In testimony whereof, I have hereto set my hand and seal of office, at, this day of, in the year of Our Lord one thousand nine hundred and

No. 79. FOR WITNESS.

I hereby certify that, personally known to me, appeared before me and acknowledged to me that, the person whose name is subscribed to the annexed instrument as witness, and having been

duly sworn by me, did prove to me that did execute the same in his presence voluntarily.

In testimony whereof, I have hereto set my hand and seal of office, at, British Columbia, this day of, in the year of our Lord one thousand nine hundred and

AFFIDAVITS.

No. 80. GENERAL AFFIDAVIT.

State of }
County of } ss.

..... of the of County of and State of being duly sworn, doth depose and say, that
And further this deponent says not.

1.....

Subscribed and sworn to before me this day of A. D. 19....

2.....

(1) This line is for signature of affiant.

(2) This line is for signature and title of officer administering oath.

No. 81. AFFIDAVIT OF ACCOUNT.

State of }
..... County. } ss.

I, William Smith, of the firm of Smith, Brown & Co., do solemnly swear that the several items mentioned in the annexed account are just and true; that the articles were furnished, as therein charged, and that the amount claimed, to wit, the sum of fifty dollars, is due and unpaid, after allowing all just credits.

Subscribed and sworn to before me, this day of, 19..

.....

Notary Public.

No. 82. AFFIDAVIT OF HEIRSHIP.

State of Pennsylvania, }
County of } ss.

In the matter of the real estate of John J. Belst, of Philadelphia, lately deceased.

To whom it May Concern: We respectfully make oath to show:

That, John J. Belst died by railroad accident in the State of owning and seized of the following described real estate situated in the City of Chicago, County of Cook and State of Illinois, to-wit:

Lots 2 and 3 in Block 5 in Cornell or Subdivision in Sections 6 and

35, Township 36 North, Range 14 East of Principal Meridian in Cook County, Illinois. That John J. Belst and Ellen L. B., his wife, had no children or heirs of their bodies. That the names of the only heirs of the said John J. Belst, deceased, and the interests of each of said heirs in the above described premises of which said John J. Belst died seized, are as follows: * * * (names and residences, and interests of each).

Sworn and subscribed to before me this day of A. D. 19..

No. 83. LOSS OF NOTES.

State of }
County of } ss.

I,, on oath, depose and say: That on the day of, A. D. 19.., I,, together with, made a certain deed of trust to, to secure the payment of the certain principal promissory note of that date, for dollars, payable in years from said date, to the order of, with interest at per cent. per annum, payable in semi-annual installments of \$. each, which semi-annual payments were evidenced by coupon interest notes, as in said deed described. That said coupons were numbered from 1 to, inclusive, and in the order they respectively became due, that said deed was filed in the office for the registry of deeds for County, State of, on the day of, A. D. 19.., and recorded in Book, of, page; that all of said notes have been paid and canceled, and are herewith produced, excepting coupons numbered, which, although diligent search has been made therefor, cannot be found; that said missing notes have been either mislaid, lost or destroyed, and therefore cannot now be produced; that this affidavit is made to obtain the release of the aforementioned deed of trust.

Subscribed and sworn to before me, at, this day of, A. D. 19.. Witness my hand and official seal.

.....
Notary Public.

No. 84. MEMORANDA.

For reason of the statements contained in the foregoing affidavit, I have this day of, A. D. 19.., executed a release of the aforementioned deed of trust.

.....,
Trustee.

No. 85. (Georgia.) AFFIDAVIT.

You, A. B., do swear (or affirm) that the foregoing defense is true, to the best of your knowledge and belief, so help you God.

Where material words are omitted by accident or mistake in an affidavit to appeal in forma pauperis, such omission is amendable.

Affidavits of illegality are, upon motion and leave of court, amendable instantly by the insertion of new and independent grounds; provided, the defendant will swear that he did not know of such grounds when the original affidavit was filed.

All affidavits for the foreclosure of liens, including mortgages, and all affidavits that are the foundation of legal proceedings, and all counter affidavits, shall be amendable to the same extent as ordinary declarations, and with only the restrictions, limitations, and consequences now obtaining in the case of ordinary declarations and pleas. In all civil cases founded on unconditional contracts in writing, where there is an issuable defense, and where the defendant does not reside in the county where suit is pending, the agent or attorney of the defendant may make oath to the plea and swear it to be true according to the best of his knowledge and belief. Where claimants are unable to give bond and security as required, it shall and may be the privilege of such claimants to file, in addition to the oath required, an affidavit as follows:

I, A. B., do swear that I do not interpose this claim for delay only; that I bona fide claim the right and title to the same; that I am advised and believe that the claim will be sustained; and that from poverty I am unable to give bond and security as now required by law.

When said affidavit shall have been made and delivered to the levying officer, the same shall suspend the sale in the same manner as if bond and security had been given.

Attorneys cannot take affidavits required of their clients, unless specially permitted by law.

Oath includes affirmation.

No. 86. (Illinois.) AFFIDAVIT OF AGE OF CHILD.

SCHOOL CERTIFICATE.

The office of (city) (State)

EMPLOYMENT CERTIFICATE.

This certifies that I have made a careful examination of all the proofs, documentary and otherwise, required by section 5 of an Act entitled, "An act concerning child labor" approved and in force, for (name of minor), and find the following:

(a) That the above named minor can read and write legibly, simple sentences in the English language, and has completed the work of the grade in the school, and that he has attended school at least 130 days during the year previous to this date, or between his thirteenth and fourteenth birthdays.

(b) That the above named minor is physically fit to do the work specified in the statement submitted in accordance with the requirements

of section 5 of the aforesaid Act; and that his height is (feet and inches), weight, complexion (fair or dark), hair (color)

(c) That he or she was born at (city, state or country)....., on the day of, 19...., as shown by.

(d) That (name of employer) of (address) has promised the said minor present employment at (character of the work)..... for hours per day and days per week.

Officer duly authorized by the superintendent of the board of education (or other local school authority) of (city), to issue employment certificates.

This certificate belongs to the board of education (or other local school authority) and is to be returned to this office within three days after (name of minor) leaves the service of the employer holding the same.

No. 87. (West Virginia.) VERIFICATION OF PLEADING.

State of West Virginia, County, to wit:

A. B., the plaintiff (or defendant) named in the foregoing bill (or answer), being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information, he believes them to be true.

A. B., plaintiff (or defendant).

Taken, sworn to and subscribed before me this day of

.....

Officer.

No. 88. FOR INJUNCTION.

A bill of injunction to be sworn to by a party other than the litigants, must show what is made on information and belief.

A. B., being duly sworn, says that he is the agent (or attorney) of the plaintiff (or defendant) named in the foregoing bill (or answer), and that he knows the contents thereof; that the facts and allegations therein contained are true, except such as are therein stated upon information and belief, and that as to such allegations he believes them to be true.

C. D., agent (or attorney).

No. 89. (New Mexico.)

I do solemnly swear (or affirm) that the within and before mentioned account is true and correct, and that the services have been rendered (or articles have been furnished) as stated, and that no part thereof has been paid.

No. 90. AFFIDAVIT IN ATTACHMENT.

State of New Mexico, }
County of } ss.

This day personally appeared before me the undersigned, clerk of

the court, A. B. (or C. D., agent for A. B.), and, being duly sworn, says that E. F. is justly indebted to the said A. B. in the sum of after allowing all just off-sets, and that the said E. F. is (..... set forth the cause of attachments).

A. B., .

Or C. D., Agent for A. B.

Sworn and subscribed before me, this day of, A. D.

.....,

Clerk.

No. 91. (Vermont.) TO A MORTGAGE.

We severally swear that the foregoing mortgage is made for the purpose of securing the debt specified in the conditions thereof, and for no other purpose, and that the same is a just debt, due and owing from the mortgagor to the mortgagee. Which affidavit, with the certificate of the oath signed by the authority administering the same shall be appended to such mortgage and recorded therewith.

When a corporation is a party it may be made and subscribed to by a director, trustee, cashier, or treasurer, or by a person authorized by the corporation.

When a partnership is a party one of its members may subscribe to it.

OFFICIAL OATHS.

No. 92. OATH OF GOVERNMENT OFFICERS.

I, A. B., do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted, nor attempted to exercise the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

.....

No. 93. OATH OF GOVERNMENT OFFICERS FORMERLY PARTICIPANTS IN THE REBELLION.

I, A. B., do solemnly swear (or affirm) that I will support and defend the constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

.....

No. 94. NOTARY'S OATH.

I do solemnly swear that I will support the constitution of the United States and the constitution of the State of....., so long as I continue a citizen thereof, and that I will faithfully discharge, according to law, the duties of the office of.....to the best of my ability, so help me God.

No. 95. OATH REQUIRED TO BE TAKEN BY ALL PERSONS BEFORE ENTERING UPON THE DUTIES OF THEIR OFFICE IN KENTUCKY.

FORM.

I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this commonwealth, and be faithful and true to the commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of according to law, and I do further swear (or affirm) that since the adoption of the present constitution, I being a citizen of this State, have not fought a duel with deadly weapons within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, so help me God.

.....

No. 96. OATH OF OFFICE IN NEVADA.

I,, do solemnly swear (or affirm) that I will support, protect, and defend the constitution and government of the United States, and the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign; and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution, or law of any State convention or legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever, and I do further solemnly swear (or affirm) that I have not fought a duel, nor

sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance, since the adoption of the constitution of the State of Nevada, and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel, during my continuance in office; and further, that I will well and faithfully perform all the duties of the office of, on which I am about to enter (if an oath) "so help me God," (if an affirmation), under the pains and penalties of perjury.

No. 97. IN NORTH CAROLINA.

Party to lay his hand on the holy evangelists of Almighty God, in token of his engagement to speak the truth, as he hopes to be saved in the way and methods of salvation pointed out in that blessed volume; and in further token, that, if he should swerve from the truth, he may be justly deprived of all blessings of the gospel and made liable to that vengeance which he has imprecated on his own head; and he shall kiss the holy gospel, as a seal of confirmation to the said engagements.

If conscientiously opposed to taking the Book, he may stand with his right hand uplifted and say: "I,, do appeal to God, as a witness of the truth and the avenger of falsehood, as I shall answer the same at the great day of judgment when the searcher of all hearts shall be known," etc.

No. 98. OATH REQUIRED OF AN OFFICER OF VIRGINIA.

I,, do declare myself a citizen of the commonwealth of Virginia, and do solemnly swear that I will support and maintain the constitution and laws of the United States, and the constitution and laws of the State of Virginia; that I recognize and accept the civil and political equality of all men before the law; and that I will faithfully perform the duty of to the best of my ability. So help me God.

No. 99. OATH OF COMMISSIONER OF DEEDS.

I,, swear (or affirm) that I will faithfully perform the duties of commissioner to the best of my ability. So help me God.

No. 100. OATH ALLOWED TO OFFICE HOLDERS.

I swear (or affirm) that I have not since the removal of my disabilities by an act of the general assembly, approved the day of, nineteen, fought in a duel, the issue of which was or might have been the death of either party; nor have I been knowingly the bearer of any challenge or acceptance to fight a duel actually fought; nor have I been otherwise engaged or concerned, directly or indirectly, in a duel actually fought since said time; nor will I during

my continuance in office be so engaged, directly or indirectly. So help me God.

No. 101. OATHS GENERALLY.

Should be administered while standing with the head uncovered and the right hand raised.

1. You do solemnly swear, that you will true answers make to such questions as shall be put to you, touching the execution of this conveyance. So help you God.

2. You do solemnly, sincerely and truly declare and affirm that you will true answers make to such questions as shall be put to you, touching the execution of this conveyance.

No. 102. TO A WITNESS.

3. You do solemnly swear, that you will true answers make to such questions as shall be put to you, touching the identity of the parties (or, the subscribing witness) to this conveyance. So help you God.

4. You do solemnly swear by the everliving God, that the contents of this affidavit by you subscribed to are true.

5. You do solemnly swear, that the evidence which shall be given by you, touching the matters in controversy between C. D. and G. B., shall be the truth, the whole truth, and nothing but the truth. So help you God.

6. You do solemnly swear by the everliving God, that the statement herein set forth and subscribed to by you is the truth.

103. AFFIRMATION.

7. You do solemnly, sincerely and truly declare and affirm.

No. 104. (Indiana.) OATH.

Swear to tell the truth, the whole truth, and nothing but the truth.

No. 105. OATH.

Shall be most consistent with and binding upon the conscience of the party taking it.

No. 106. TO WITNESS IN MINNESOTA.

You do solemnly swear that the evidence you shall give relative to the cause now under consideration shall be the truth and nothing but the truth. So help you God.

No. 107. AFFIDAVIT.

You do solemnly swear, that the contents of this affidavit, by you subscribed to, are true, as therein stated. So help you God.

No. 108. FORM FOR AN INFIDEL.

You do honestly and sincerely promise and declare that the testimony you shall give relative to the cause now under consideration shall be the truth, the whole truth, and nothing but the truth, and this under the pains and penalties of perjury.

No. 109. CANADA.

Canada,
Province of British Columbia. } to wit:

I, A. B., solemnly declare that (state facts), and I make this solemn declaration, conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the "Canada Evidence Act, 1893."

Declared before me,, at, this day of,
A. D.

No. 110. AFFIRMATION FORM.

I, A. B., do solemnly, sincerely and truly affirm and declare that the taking of an oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely and truly affirm and declare, etc.

No. 111. BILL OF SALE.

Know all men by these presents, that, of the, in the County of, and State of, part.. of the first part, for and in consideration of the sum of dollars, lawful money of the United States of America, to in hand paid, at or before the ensealing and delivery of these presents, by of the second part, the receipt whereof is hereby acknowledged, ha.. granted, bargained, sold, and delivered, and, by these presents, do.. grant, bargain, sell and deliver, unto the said part.. of the second part, all the following goods, chattels, and property, to wit:.....

To have and to hold the said goods, chattels, and property unto the said part.. of the second part, heirs, executors, administrators, and assigns, to and for own proper use and behoof, forever.

And the said part.. of the first part do.. vouch to be the true and lawful owner.. of the said goods, chattels, and property, and have in full power, good right, and lawful authority, to dispose of the said goods, chattels, and property, in manner, as aforesaid: And do, for heirs, executors, and administrators, covenant and agree to and with the said part.. of the second part, to warrant and defend the said goods, chattels, and property to the said part.. of the second part, executors, administrators, and assigns, against the lawful claims and demands of all and every person and persons whomsoever.

In witness whereof, have hereunto set hand.. and

seal., the day of, in the year one thousand nine hundred and
 (Seal.)
 (Seal.)

Sealed and delivered in the presence of

.....
 State of, }
 County. } ss.

I,, in and for said county, do hereby certify, that this instrument was duly acknowledged before me, by the above named, this day of, A. D. 19....

No. 112. AGREEMENT.

This agreement made this day of, between T. B. of, merchant, of the first part, by C. J., his attorney, and W. F. of, merchant, of the second part, by C. S., his attorney, witnesseth.

That the said party of the first part, in consideration of dollars to him in hand paid, agrees to (state agreement).

(Signed and sealed by both attorneys.)

No. 113. AGREEMENT FOR SALE AND PURCHASE.

This agreement, made this day of, between T. S., of, farmer, and G. S., of, merchant, witnesseth:

That the said T. S., in consideration of the agreement hereinafter contained, to be performed by G. S., agrees to sell and deliver to the said G. S., at his warehouse in (specify goods,), on or before the day of, 19..., and the said G. S., in consideration thereof, agrees to pay to the said T. S. the sum of dollars per for the said immediately upon the completion of the delivery thereof.

In witness whereof we have this day and year as above written set our hands and seals.

No. 114. AGREEMENT FOR WARRANTY DEED.

Articles of agreement, made this day of, in the year of our Lord one thousand nine hundred and, between, party of the first part, and, party of the second part; witnesseth, that if the party of the second part shall first make the payments and perform the covenants hereinafter mentioned on part to be made and performed, the said party of the first part hereby covenants and agrees to convey and assure to the said party of the second part, in fee simple, clear of all incumbrances whatever, by a good and sufficient warranty deed, the lot., piece., or parcel of ground, situated in the County of, and State of, known and described as, and the said party of the second part hereby covenants and agrees to pay to the said party of the first part the sum of dollars in the manner following:, with interest at the

rate of per centum per annum, payable annually, on the whole sum remaining from time to time unpaid, and to pay all taxes, assessments or impositions that may be legally levied or imposed upon said land, subsequent to the year, And in case of the failure of the said party of the second part to make either of the payments, or any part thereof, or perform any of the covenants on part hereby made and entered into, this contract shall, at the option of the party of the first part, be forfeited and determined, and the party of the second part shall forfeit all payments made by on this contract, and such payments shall be retained by the said party of the first part in full satisfaction and in liquidation of all damages by sustained, and shall have the right to re-enter and take possession of the premises aforesaid

It is mutually agreed, by and between the parties hereto, that the time of payment shall be the essence of this contract and that all the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

.....(Seal.)

.....(Seal.)

.....(Seal.)

Sealed and delivered in presence of

.....

.....

No. 115. ASSIGNMENT OF AN ACCOUNT.

Know all men by these presents, that I, A. B., of, in consideration of dollars, lawful money of the United States [to me paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged (c)], have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over unto Y. Z., of, his executors, administrators, and assigns, to his and their own proper use and benefit [all my right, title, and interest in and to]*, any and all sum or sums of money now due or to grow due upon the annexed account, or upon the sales [or, services, or loans, or whatever transactions may be the basis of the account] therein mentioned. And I do hereby give the said Y. Z., his executors, administrators, and assigns, the full power and authority, for his or their own use and benefit, but at his or their own cost, to ask, demand, collect, receive, compound, and give acquittance for the same, or any part thereof, and in my name or otherwise to prosecute and withdraw any suits or proceedings at law or in equity therefor.

In witness whereof, I have hereunto set my hand and seal, this day of, 19.....

In presence of

(Signature.) (Seal.)

(Signature of witness or witnesses.)

No. 116. ASSIGNMENT OF LEASE.

(As in Form 115 to the *, continuing thus:) a certain indenture of lease, bearing date the day of, in the year one thousand nine hundred and, made by, of, to me the said, of a certain dwelling-house and lot, situate in, with all and singular the premises therein mentioned and described, and the buildings thereon, together with the appurtenances; (h) to have and to hold the same unto the said, his heirs, executors, administrators, and assigns, from the day of next, for and during all the rest, residue, and remainder of the term of years mentioned in the said indenture of lease; subject, nevertheless, to the rents, covenants, conditions, and provisions therein also mentioned. And I do hereby covenant and agree to and with the said that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments and incumbrances whatsoever.

In witness, etc.

No. 117. ASSIGNMENT OF MORTGAGE.

Know all men by these presents, that whereas, of, on day of, by his deed of mortgage of that date, for the consideration of, did grant, bargain, sell, and convey unto me,, of, my heirs and assigns, all and singular (here describe the mortgaged premises), to have and to hold the same to me the said, my heirs and assigns, forever, upon condition (here recite the conditions of the mortgage). Now, therefore, I, the said, in consideration of the sum of, to me in hand paid before the ensembling hereof, do by these presents sell, assign, transfer, and set over unto, of, his heirs and assigns, forever, the said (premises) to have and to hold the same to him, the said, his heirs and assigns, forever, as fully and in as ample a manner as I, the said, my heirs or assigns, might hold and enjoy the same by virtue of the mortgage-deed aforesaid, and not otherwise.

And I do, for myself, my heirs, executors, and administrators, hereby authorize and empower the said, his heirs, executors, and administrators, to receive to his and their own use the sum or sums mentioned in the condition of said deed, whenever the same shall be tendered or paid to him or them, by the said, his heirs, executors, or administrators, agreeably thereto, and to discharge the said mortgage, or to take and pursue such other steps and means for recovery of the said sum or sums, with the interest, by sale of the said mortgaged premises, or otherwise, as by law are provided, as fully to all intents and purposes as I, the said, my heirs, executors, or administrators might or could do.

And I do, for myself, my heirs, executors, and administrators, covenant with the said, his heirs and assigns, that I have good

right to assign, the said premises as aforesaid; and that he, the said, shall, and may have, hold, occupy, possess, and enjoy the same (subject, however, to the right of redemption, as by law in such cases is provided), against the lawful claim of all persons.

In witness, etc.

No. 118. BOND FOR DEED.

Know, all men by these presents, that, of the County of, and State of, held and firmly bound unto, of the County of, and State of, in the penal sum of dollars, to be paid unto the said heirs, executors, administrators or assigns, to which payment, well and truly to be made bind heirs, executors, administrators, and every of them, firmly by these presents.

Sealed with seal., and dated the day of, A. D. 19...

The condition of the above obligation is such, that, whereas, the above bounden ha.. this day sold to the said, heirs and assigns, for the sum of dollars, all the following described lot., piece., or parcel.. of land, to wit:..... which sum of dollars is to be paid in the manner following:, with interest at the rate of per cent. per annum payable annually on the whole sum remaining from time to time unpaid.

Upon the payment of the said sums being made at the time and in the manner aforesaid, and of all taxes, assessments, or impositions that may be legally levied or imposed upon said land subsequent to, A. D. 19.., the said, heirs, executors, and assigns, covenant.. and agree.. to and with the said, heirs, executors, administrators and assigns to execute a good and sufficient deed of conveyance, in fee simple, free from all incumbrance, with full covenants of warranty for the above described premises.

Now, if the said shall well and truly keep, observe, and perform covenants and agreements herein contained on part, to be kept and performed, then this obligation to be void; otherwise to remain in full force and virtue. It is expressly understood and agreed by and between the parties hereto, that time is of the essence of this contract, and, that in the event of the nonpayment of said sum of money, or any part thereof, or the interest thereon, at the time or times herein named for its payment, that then the said absolutely discharged at law and in equity from any and all liability to make and execute such deed.

..... (Seal.)

..... (Seal.)

Sealed and delivered in the presence of

.....
.....

No. 119. BOND FOR MONEY.

Know all men by these presents, that I,, of the town of, in the county of, and State of, merchant, am held and firmly bound unto, of said town, farmer, in the sum of dollars (inserting the penal sum, which is commonly double the amount of the principal sum intended to be secured, in order to cover interests, costs, expenses, and other contingencies), good and lawful money of the United States, to be paid to said, his executors, administrators, or assigns, for which payment well and truly to be made I do bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal, and dated the day of, 19....

The condition of this obligation is such, that if the above-bounden, his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named, his executors, administrators, or assigns, the just and full sum of dollars (inserting the principal intended to be secured), with interest at the rate of per cent. per annum (or, with legal interest), for the same, on (or before), (b) the day of, which will be in the year one thousand nine hundred and, without fraud or other delay, then this obligation is to be void, otherwise to remain in full force.

.....(Seal.)

No. 120. CERTIFICATE.

The undersigned T. S., fence viewer of the town of, hereby certifies, after due inquiry, that G. B. is entitled to receive from the owner of the which came upon his inclosed lands in said town on the day of, 19.., the sum of dollars as his reasonable charges for keeping the same from the day of, 19.., to the day of, and that my fees in this matter amount to dollars.

.....

No. 121. CONTRACT.

This agreement made the day of, 19.., by and between T. C., of the of, in the County of and the State of, of the first part, and by W. C., of, of the second part, witnesseth: That the said party of the second part covenants and agrees to and with the party of the first part to (insert agreement). And the said party of the first part covenants and agrees to pay unto the said party of the second part, for the same, the sum of dollars in the following installments: dollars on the day of and dollars on the day of, with per cent. interest due and payable at the time.

And for the true and faithful performance of all and every of

the covenants and agreements above mentioned the parties to these presents bind themselves, each unto the other, in the penal sum of dollars as liquidated damages, to be paid by the failing party.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of

.....

No. 122. CONTRACT WITH EMPLOYEE.

This agreement, made this, day of, 19...., between, of, of the first part, and, of, of the second part, witnesseth: That the said agrees faithfully and diligently to serve the said, as clerk, in the store of the said (or otherwise), at, for the period of from and after the day of next, for the sum of dollars per, In consideration of which service so to be performed, the said agrees to pay the said the sum of per month (payable as follows: on the day of, and on the day of each month following, during said term, and at the expiration thereof, the balance of such sum as has not then been already paid).

And it is understood and agreed that the death of either of them occurring prior to the expiration of said term of, shall terminate this agreement.

In witness (etc., as above).

No. 123. CONTRACT FOR SALE OF REAL ESTATE.

Chicago,, 19....

Received of, dollars, as part payment towards the purchase of the following described real estate: which is hereby bargained and sold to the said for the sum of dollars, dollars more to be paid on the delivery of a good and sufficient warranty deed of conveyance for the same within days from this date, or as much sooner thereafter as the deed is ready for delivery, after the title has been examined and found good, and the balance to be paid as follows: To be secured by trust deed or mortgage on the property above described. Should the title to the property not prove good, then this \$. to be refunded. But should the said fail to perform this contract on his part promptly at the time and in the manner above specified (time being of the essence of this contract), then the above dollars shall be forfeited by as liquidated damages, and the above contract shall be and become null and void.

..... (Seal.)

..... (Seal.)

No. 124. WARRANTY DEED—BY CORPORATION—LONG FORM.

This indenture, made this day of, in the year of our Lord one thousand nine hundred and, between, a corporation created and existing under and by virtue of the laws of the State of and doing business in the State of, party of the first part, and, a corporation created and existing under and by virtue of the laws of the State of, having its principal office in the of and State of, party of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, has granted, bargained, sold, remised, released, conveyed, aliened and confirmed, and by these presents does grant, bargain, sell, remise, release, convey, alien and confirm, unto the said party of the second part, and to its successors and assigns, forever, all the following described lot., piece., or parcel.. of land, situated in the of, County of, and State of, and known and described as follows, to wit:.....

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim or demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances: To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, its successors and assigns, forever.

And the said, party of the first part, for itself and its successors, does covenant, grant, bargain and agree, to and with the said party of the second part, its successors and assigns, that at the time of the ensealing and delivery of these presents, it is well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances, of every kind or nature whatsoever; and the above bargained premises, in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against all and every other person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.....

This deed is executed pursuant to authority given by the board of of said company.

In testimony whereof, the said company hath hereunto caused its corporate seal to be affixed, and these presents to be signed by its

..... president, and attested by its secretary, the day and year first above written.

By, President.

Attest:, Secretary.

Signed, sealed and delivered in presence of

.....
.....

State of..... }
County of } ss.

I,, in and for said county, in the State aforesaid, do hereby certify that, personally known to me to be the president of the company, and personally known to me to be the secretary of said company, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such president and secretary, they signed and delivered the said instrument of writing as president and secretary of said company, and caused the corporate seal of said company to be affixed thereto, pursuant to authority given by the board of of said company as their free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

Given under my hand and seal this day of, A. D. 19...

.....
.....

No. 125. QUITCLAIM DEED—LONG FORM.

This indenture, made this day of, in the year of our Lord one thousand nine hundred and, between, of the, in the County of, and State of, party of the first part, and, of the, in the County of, and State of, party of the second part:

Witnesseth, that the said party of the first part, for and in consideration of the sum of dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, ha.. remised, released, sold, conveyed and quitclaimed, and by these presents do.. remise, release, sell, convey, and quitclaim, unto the said party of the second part, heirs, and assigns, forever, all the right, title, interest, claim, and demand, which said party of the first part ha.. in and to the following described lot., piece., or parcel.. of land, situated in the County of, and State of, and known and described as follows, to-wit:.....

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining; and all the estate, right, title, interest, and claim whatever, of the said party of the first part, either in law or equity,

to the only proper use, benefit and behoof of the said party of the second part, heirs, and assigns, forever.

And the said party of the first part hereby expressly waive.. and release.. any and all right, benefit, privilege, advantage, and exemption, under or by virtue of any and all statutes of the State of Illinois, providing for the exemption of homesteads from sale on execution or otherwise.

In witness whereof, the said party of the first part hereunto set hand.. and seal.. the day and year first above written.

.....(Seal.)

.....(Seal.)

A. D. 19....

Signed, sealed and delivered, in the presence of

.....
.....

County of }
State of } ss.

I,, in and for the said county, in the State aforesaid, do hereby certify, that, personally known to me to be the same person.. whose name.. subscribed to the foregoing instrument appeared before me this day in person, and acknowledged that ..he.. signed, sealed, and delivered the said instrument as free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and seal, this day of, A. D. 19....

No. 126. WARRANTY DEED—JOINT TENANCY FOR ILLINOIS.

This Indenture, made this day of, 19...., between of the in the county of and State of part... of the first part, and of the in the County of and State of parties of the second part:

Witnesseth, that the part... of the first part, for and in consideration of the sum of Dollars, in hand paid, convey and warrant to the said parties of the second part, not as tenants in common, but as joint tenants, the following described Real Estate, to wit: situated in the County of Cook, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois.

To have and to hold the above granted premises unto the said parties of the second part forever, not in tenancy in common, but in joint tenancy.

In witness whereof, the said part.... of the first part ha.... here-

unto set hand.... and seal.... the day and year first above written.

.....(Seal.)

.....(Seal.)

No. 127. MORTGAGEE'S DEED.

This indenture, made this day of, in the year of our Lord, one thousand nine hundred and, between of the, in the County of, and State of, party of the first part, and, of the, in the County of, and State of, party of the second part:

Witnesseth that, whereas, of the in the County of, and State of, by a certain indenture of mortgage, dated the day of, A. D. 19..., did bargain, sell, and convey unto, heirs and assigns forever, all the premises hereinafter described, to secure the payment of the sum of dollars and interest, according to the conditions of, certain, bearing date on the A. D. 19..., which said mortgage was afterwards on the day of, A. D. 19..., at o'clock in the noon, duly recorded in the recorder's office of Cook County, in the State of Illinois, in Book of mortgages, on pages

And whereas, the said mortgage contained a power of sale, among other things, authorizing and empowering the said party of the second part in said mortgage, heirs, executors, administrators, attorneys or assigns, if default should be made in the payment of the said in said mortgage mentioned, or any part thereof, or the interest thereon, or any part thereof, according to the tenor and effect of said or in case of waste, or nonpayment of taxes or assessments, or neglect to procure or renew insurance, or in case of the breach of any of the covenants or agreements in said mortgage contained, after publishing a notice in the Chicago Legal News or in any newspaper published in the City of Chicago, in said Cook County, for successive weeks before the day of such sale, to sell the said mortgaged premises or any part thereof at public auction to the highest bidder for cash, and to make, execute and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds of conveyance in the law for the same

And whereas, also, default having been made in the payment of, and whereas, in pursuance of said power of sale in said mortgage contained and above recited, and of the statute in such case made and provided,, the undersigned,, party of the first part, on the day of, A. D. 19..., caused due notice to be published in the Chicago Legal News, a newspaper published in the said City of Chicago, that said premises hereinafter described would, on the day of, A. D. 19..., at the hour of o'clock in the noon of said day, be sold at public auction, at the, in said County

of Cook, to the highest bidder for cash, by virtue of the power and authority in vested by said mortgage; which said notice was duly published weekly for successive weeks in the said Chicago Legal News, and that the date of the first paper containing the same was the day of, A. D. 19...., and of the last the day of, A. D. 19....

And whereas, also, the said premises having been by the said party of the first part, on the day of, A. D. 19...., at o'clock in the noon of said day, in the manner prescribed in and by said mortgage, and at the place last aforesaid, in pursuance of said notice, offered for sale at public auction, to the highest bidder, for cash, and the said party of the second part having been the highest bidder therefor, and having bid for the tract hereinafter named, the sum of dollars, duly declared the purchaser thereof.

.....

Now, therefore, this indenture witnesseth, that the said party of the first part, by virtue of the authority in vested by said mortgage as aforesaid, and of the statute in such case made and provided, for and in consideration of the sum so bid as aforesaid, to in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, ha.. sold, conveyed, aliened, remised, released, and confirmed, and by these presents, do.. sell, convey, alien, remise, release, and confirm unto the said party of the second part, and to heirs and assigns forever, all the following described lot.., piece.., or parcel.. of land, situated in the County of Cook, and State of Illinois, known and described as follows, to wit:..... Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, as the same are described and conveyed in and by the said mortgage; and also all the estate, right, title, interest, property, claim, and demand whatsoever, both in law and equity, of the said, as well as of the said party of the first part, of, in and to the above described premises, with the appurtenances, as fully, to all intents and purposes, as the said party of the first part hath power and authority to grant, sell, and convey the same by virtue of the said mortgage and of the statute in such case made and provided, to have and to hold the said above granted premises, with their appurtenances, and every part thereof, unto the said party of the second part, heirs and assigns, forever.

In witness whereof, the said party of the first part has hereunto set hand.. and seal.., the day and year first above written.

..... (Seal.)

..... (Seal.)

No. 128. RELEASE DEED.

Know all men by these presents, that, of the County of, and State of, for and in consideration of one dollar, and for other good and valuable considerations, the receipt whereof

is hereby confessed, do hereby remise, convey, release and quitclaim, unto, of the County of, and State of, all the right, title, interest, claim, or demand whatsoever may have acquired in, through, or by a certain trust deed, bearing date the day of, A. D. 19...., and recorded in the recorder's office of County, in the State of, in Book of, page, to the premises therein described, as follows, to wit: Together with all the appurtenances and privileges thereunto belonging or appertaining.

Witness hand.. and seal.., this day of, A. D. 19.....

..... (Seal.)

..... (Seal.)

State of, }
..... County. } ss.

I,, in and for the said county, in the State aforesaid, do hereby certify, that, personally known to me to be the same person.. whose name.. subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged, that ..he.. signed, sealed, and delivered the said instrument as free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal, this day of, A. D. 19....

.....,
.....

No. 129. (Indiana.) WARRANTY DEED.

A. B. conveys and warrants to C. D. (describe premises) for the sum of this day of

Signed.....(Seal.)

(Acknowledgment.)

No. 130. (Indiana.) QUITCLAIM DEED.

A. B. quitclaims to C. D. (describe the premises) for the sum of, same to be signed, sealed and acknowledged.

No. 131. (Iowa.) QUITCLAIM DEED.

For the consideration of dollars, I hereby quitclaim to A. B. all my interest in the following tract of real estate (describe it).

No. 132. (Iowa.) WARRANTY DEED.

For the consideration of dollars, I hereby convey to A. B. the following tract of real estate (describe it), and I warrant the title against all persons whomsoever (or other words of warranty as may be desired).

No. 133. (Iowa.) DEED WITHOUT WARRANTY.

For the consideration of dollars, I hereby convey to A. B. the following tract of real estate (describe it).

No. 134. (Kansas.) WARRANTY DEED.

A. B. conveys and warrants to C. D. (here describe premises) for the sum of

Same to be dated, signed and acknowledged by the grantor.

No. 135. QUITCLAIM DEED.

A. B. quitclaims (describe the premises) for the sum of

Same to be dated, signed and acknowledged by the grantor.

The word "heirs" and other terms of inheritance are not necessary.

No. 136. (Maryland.) DEED.

This deed, made this day of in the year....., by me (name of grantor), witnesseth, that in consideration of (consideration), I, the said, do grant unto (name of grantee), all that (describe property).

Witness my hand and seal.

Test.,

No. 137. MARRIED WOMAN A PARTY.

This deed, made this day of, in the year, by us, and, his wife, witnesseth, that in consideration of, we, the said and his wife, do grant unto

Witness our hands and seals.

Test.,

(Seal.)

No. 138. (Minnesota.) QUITCLAIM DEED.

The grantor (insert names and residence) for the consideration of (insert consideration) conveys and quitclaims to (insert names of grantees) all interest in the following described real estate (insert description), situate in the County of, in the State of Minnesota.

Dated this day of, A. D.

Acknowledgment of notary follows.

No. 139. (Minnesota.) WARRANTY DEED.

The grantor (insert names and residence), for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (name of grantee) the following described real estate (insert description), situate in the County of, in the State of Minnesota.

Dated this day of, A. D.
 State of Minnesota, }
 County of } ss.

On this day of before me personally appeared A. B., to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that ..he.. executed the same as free act and deed.

.....

Notary Public.

Every deed in substance in the above form conveys and warrants in fee simple.

No. 140. (Mississippi.) DEED.

State of }
 County of } ss.

In consideration of, I convey and warrant to the land described

Witness my signature, the day of, A. D.

If only a special warranty is intended, add the word "specialty" to the word warrant in the conveyance.

No. 141. (North Dakota.) GRANT OF LAND.

This grant, made the day of in the year, between A. B., of, of the first part, and C. D., of, of the second part, witnesseth: That the party of the first part hereby grants to the party of the second part, in consideration of dollars, now received, all the real property situated in and bounded (or described) as follows:

Witness the hand of the party of the first part.

.....

If not acknowledged must be attested by one witness.

No. 142. (Oklahoma.) WARRANTY DEED.

Know all men by these presents:

That, part.. of the first part, in consideration of the sum of dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto the following described real property, and premises, situate in County, State of Oklahoma, to wit: together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same to have and to hold said described premises unto the said party of the second part,, heirs and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature.

Signed and delivered this day of

A quitclaim is substantially the same, only inserting "quitclaim" before the words grant, bargain, etc., and omitting "and warrant the title to same."

No. 143. (South Carolina.) CONVEYANCE.

The State of South Carolina.

Know all men by these presents, that I, A. B., of, in the State aforesaid, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release, unto the said C. D. all that (..... describe), together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in any wise incident or appertaining, to have and to hold all and singular the premises before mentioned, unto the said C. D., his heirs and assigns, forever, and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said C. D., his heirs and assigns, against myself and my heirs, and against any person whomsoever lawfully claiming or to claim the same, or any part thereof.

Witness my hand and seal, this day of in the year of our Lord, and in the year of the independence of the United States of America

.....L. S.

The above executed in the presence of two or more credible witnesses, and certified to by the County Auditor, will entitle it to record.

No. 144. (Tennessee.) DEED OF WARRANTY.

I hereby convey to A. B. the following tract of land (..... describe it) and I warrant the title against all persons whatsoever.

No. 145. SPECIAL WARRANTY DEED.

Add "I covenant that I am seized and possessed of the said land, and have a right to convey it, and I warrant the title against all persons claiming under me."

No. 146. QUITCLAIM.

I hereby convey to A. B. all my interest in the following land.

No. 147. (Utah.) QUITCLAIM DEED.

A. B., grantor (here insert names and residence), hereby quitclaims to C. D., grantee (here insert names and residence), for the sum of dollars, the following described tract of land, in County, Utah (here describe the premises).

Witness the hand of said grantor this day of, A. D.

No. 148. (Utah.) WARRANTY DEED.

A. B., grantor, hereby conveys and warrants to C. D., grantee, for the sum of dollars, the following described tract of land in County, Utah (here describe the premises).

Witness the hand of said grantor this day of, A. D.

No. 149. (West Virginia.) DEED.

This deed, made the day of, in the year, between (parties' names), witnesseth: That in consideration of the said doth grant unto the said all (describes premises and covenants). Witness the following signature and seal.

No. 150. (Wisconsin.) WARRANTY DEED.

A. B., grantor, of County, Wisconsin, hereby conveys and warrants to C. D., grantee, of County, Wisconsin, for the sum of dollars, the following tract of land in County (here describe premises).

Witness the hand and seal of said grantor this day of, 19....

In the presence of

..... (Seal.)
..... (Seal.)

No. 151. (Wisconsin.) QUITCLAIM DEED.

A. B., grantor, of County, Wisconsin, hereby quitclaims to C. D., grantee, of County, Wisconsin, for the sum of dollars, the following tract of land in County (here describe the premises).

Witness the hand and seal of said grantor this day of, 19....

In the presence of

..... (Seal.)
..... (Seal.)

The above, when acknowledged, conveys fee simple.

No. 152. TRUST DEED.

This Indenture witnesseth that the grantor,, of the in the County of and State of, for and in consideration of the sum of dollars in hand paid, conveys and warrants to of the County of and State of the following described real estate, to wit:..... situated in the County of, in the State of, hereby releasing and waiving all rights under and by virtue of the Homestead Execution Laws of the State of, and all right to retain possession

of said premises after any default in payments or of a breach of any of the covenants or agreements herein contained in trust, nevertheless, for the purposes.

Whereas, the said, grantor herein, justly indebted upon promissory note bearing even date herewith, payable to the order of Now, if default be made in the payment of the said promissory note or any part thereof, or the interest thereon, or any part thereof, at the time and in the above manner specified for the payment thereof, or in case of waste, or nonpayment of taxes, or assessments on said premises, or of a breach of any of the covenants or agreements herein contained, then in such case the whole of said principal sum secured by the said promissory note shall thereupon, at the option of the legal holder or holders thereof, become immediately due and payable, and, on the application of the legal holder of said promissory note, or either of them, it shall be lawful for the said grantee, or his successor in trust, to enter into and upon and take possession of the premises hereby granted, or any part thereof, and to collect and receive all rents, issues and profits thereof; and in his own name or otherwise, to file a bill or bills in any court having jurisdiction thereof against the said party of the first part, heirs, executors, administrators or assigns, to obtain a decree for the sale and conveyance of the whole or any part of said premises for the purposes herein specified, by said party of the second part, as such trustee or as special commissioner, or otherwise, under order of court, and out of the proceeds of any such sale to first pay the costs of any such suit, all costs of advertising, sale and conveyance, including the reasonable fees and commissions of said party of the second part, or person who may be appointed to execute this trust, and dollars attorney's and solicitor's fees, and also all other expenses of this trust, including all moneys advanced for insurance, taxes and other liens or assessments, with interest thereon at seven per cent. per annum, then to pay the principal of said note, whether due and payable by the terms thereof or the option of the legal holder thereof, and interest due on said note up to the time of such sale, rendering the overplus, if any, unto the said party of the first part, legal representatives or assigns, on reasonable request, and to pay any rents that may be collected after such sale and before the time of redemption expires, to the purchaser or purchasers of such sale or sales, and it shall not be the duty to the purchaser to see to the application of the purchase money.

When the said note and all expenses accruing under this Trust Deed shall be fully paid, the said grantee or his successor, or legal representatives, shall reconvey all of said premises remaining unsold to the said grantor or heirs or assigns, upon receiving his reasonable charges therefor. In case of the death, resignation, removal from said County, or other inability, to act of said grantee, then of said is hereby appointed and made successor in trust herein with like power and authority, as is hereby vested in said grantee. It is agreed that said grantor shall pay all costs and attorney's fees incurred or

paid by said grantee or the holder or holders of said note in any suit in which either of them may be plaintiff or defendant, by reason of being a party to this Trust Deed, or a holder of said note, and that the same shall be a lien in said premises, and may be decreed in any decree ordering the sale of said premises and taken out of the proceeds of any sale thereof.

Witness the hand and seal of the said grantor this day of, A. D. 19.....

(Acknowledgment follows.)

No. 153. DEPOSITION OF RESIDENT WITNESS.

The deposition of of the County of and State of witness.... of lawful age, produced, sworn and examined on corporal oath, on the day of A. D. 19...., at in the in the County of and State of by me a within and for said in pursuance of the hereto annexed, for the examination of the said witness.... to be read in evidence on behalf of the on the trial of a certain suit now pending and undetermined in the Court of the wherein plaintiff.. and defendant..

The said being first by me duly sworn, according to law, previous to the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the plaintiff.. as of the defendant.. in relation to the matters in controversy between the said parties, so far as ..he should be interrogated thereto, on oath, testified as follows:

State of Illinois,
.....County, } ss.
.....

I, a within and for the said do hereby certify that in pursuance of the annexed I caused the said the witness.. named in the said and whose name subscribed to the foregoing deposition.., to appear before me on the day of, 19...., as in said specified; that previous to the commencement of the examination of the saidhe.. w.... sworn by me according to law, to testify the truth, the whole truth, and nothing but the truth, relative to the matters in controversy in the said cause now pending and undetermined in the Court of between plaintiff, and defendant, so far as ..he.. should be interrogated concerning the same; that the said deposition.. w.... taken at in the said on the day of, 19...., between the hours of o'clock a. m. and o'clock p. m. of said day, and was reduced to writing by me, who am neither of the parties in said suit, nor the attorney of either, nor interested in the event of the same; that after said deposition.. w.... taken by me as aforesaid, the interrogatories and the answers thereto of each witness, as written down, were read over to

..... and that thereupon the same were signed and sworn to by the before me, at the place and on the day and year aforesaid, and that the plaintiff present and that the defendant

In witness whereof, I have hereunto affixed my hand and seal, this day of, 19....

.....

No. 154. DEPOSITION TAKEN BEFORE NOTARY BY AGREEMENT OR NOTICE.

In the Court of County.
Of Term, A. D. 19....

..... }
vs. }
..... }

State of }
..... County. } ss.

Be it remembered, that on this day of, A. D. 19...., personally appeared before me,, a notary public in and for the, and State of Illinois, to testify on the part of, in the above entitled cause.

And the said, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did depose and say as follows, to wit:

.....

State of, }
..... County, } ss.

I,, a notary public in and for the, of, and State of Illinois, do hereby certify that on the day of, A. D. 19...., by agreement of and, personally appeared before me, at the office of, Illinois, witness to testify on the behalf of the in a certain cause now pending in the, wherein and

And I do hereby further certify, that the aforesaid witness.. w.... first duly sworn to testify the truth in relation to the matter in controversy in the cause aforesaid, so far as ..he.. should be interrogated, and that the testimony of said witness.. w.... reduced by me to writing, and first carefully read to said witness.., and the same subscribed to by said witness.. in my presence.

.....

In testimony whereof I have hereunto set my hand, and affixed my notarial seal, this day of, A. D. 19....

.....

Notary Public.

Notary's Fee, \$.....

No. 155. NOTICE TO TAKE DEPOSITION—COURT IN BLANK.

State of Illinois, }
 County. } ss.

In the Court
 of County, State of Illinois.
 Term, 19....

..... }
 vs. }
 }

Mr.

The above named
 Sir,

Please take notice, that, on the day of, A. D. 19...., at o'clock, M., and to continue from day to day, if necessary, at the of, in, in the County of, and State of Illinois, before, a, or some other officer authorized by law to take depositions in such cases, shall proceed to cause to be taken the deposition.. of of said County, to be read in evidence on the trial of the above entitled cause, on the part of said, when and where you may attend, and cross-examine the said witness., if you shall see fit so to do.

Dated this day of, A. D. 19....

.....
 Attorney for.....

No. 156. (Wisconsin.) DEPOSITION CERTIFICATE.

State of Wisconsin, }
 County. } ss.

I, (name and office), in and for said county, do hereby certify that the above deposition was taken before me, at my office, in the town of, in said county, on the day of, 19...., at o'clock noon; that it was taken at the request of the plaintiff (or defendant), etc., upon verbal (or written) interrogatories; that it was reduced to writing by myself (or by deponent, or by, a disinterested person, in my presence, and under my direction); that it was taken to be used in the action of, now pending in court (or as the case may be), and that the reason for taking it was; that attended at the taking of such deposition (or that a notice of which the annexed is a copy, was served upon, on the day of, 19...., or that the deposition was taken in pursuance of the annexed stipulation); that said deponent before examination was sworn to testify the truth, the whole truth, and nothing but the truth, relative to said cause, and that said deposition was carefully read to (or by) said deponent and then subscribed by him.

No. 157. JURAT.

Sworn and subscribed to before me, on the day of, 19..

Signature of Officer,

Title of Office.

No. 158. LEASE—SHORT FORM.

This agreement made the day of, in the year one thousand nine hundred and, between, of the first part, and, of the second part.

Witnesseth, that the said part.. of the first part ha.. agreed to let, and hereby do.. let to the said part.. of the second part, and the said part.. of the second part ha.. agreed to take, and hereby do.. take from the said part.. of the first part, for the term of, to commence on the day of, A. D. 19...., and to end on the day of, A. D. 19....

And the said part.. of the second part hereby covenant.. and agree.. to pay unto the said part.. of the first part, the rent or sum of payable

And to quit and surrender the premises, at the expiration of the said term, in as good state and condition as they were in at the commencement of the term, reasonable use and wear thereof and damages by the elements excepted.

And the said part.. of the second part further covenant.. that will not assign this lease, nor let or underlet the whole or any part of the said premises, nor make any alteration therein without the written consent of the said part.. of the first part, under the penalty of forfeiture and damages; and that will not occupy or use the said premises, nor permit the same to be occupied or used for any business deemed extrahazardous on account of fire or otherwise, without the like consent, under the like penalty.

And the said part.. of the second part further covenant.. that will permit the said part.. of the first part, or agent, to show the premises to persons wishing to hire or purchase, and on and after the first day of February next preceding the expiration of the term, will permit the usual notice of "to let" or "for sale" to be placed upon the walls or doors of said premises, and remain thereon without hindrance or molestation.

And also, that if the said premises, or any part thereof, shall become vacant during the said term, the said part.. of the first part, or representative, may re-enter the same, either by force or otherwise, without being liable to any prosecution therefor; and relet the said premises as the agent of the said part.. of the second part, and receive the rent thereof, applying the same first to the payment of such expenses as may be put to in re-entering, and then to the payment of the rent due by these presents; and the balance (if any) to be paid over to the said part.. of the second part, who shall remain liable for any deficiency.

And the said part.. of the second part hereby further covenant.. that if any default be made in the payment of the said rent, or any part thereof, at the times above specified, or if default be made in the performance of any of the covenants or agreements herein contained, the said hiring, and the relation of landlord and tenant, at the option of the said part.. of the first part shall wholly cease and determine; and the said part.. of the first part shall and may re-enter the said premises and remove all persons therefrom; and the said part.. of the second part hereby expressly waive.. the service of any notice in writing of intention to re-enter, notice to terminate the tenancy, notice to quit or demand for possession.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

..... (Seal.)

..... (Seal.)

..... (Seal.)

Sealed and delivered in the presence of

.....

No. 159. LEASE—CHICAGO FORM.

This indenture, made this day of, in the year of our Lord one thousand nine hundred and, between, party of the first part, and party of the second part, Witnesseth, that the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, executors, administrators and assigns, has demised and leased to the said party of the second part, all those premises situate, lying and being in the City of Chicago, in the County of Cook, in the State of Illinois, known and described as follows, to wit: To have and to hold the said above described premises, with the appurtenances, unto the said party of the second part, executors, administrators and assigns, from the day of, in the year of our Lord one thousand nine hundred and, for and during and until, nineteen hundred and

And the said party of the second part, in consideration of the leasing of the premises aforesaid by the said party of the first part to the said party of the second part, does covenant and agree with said party of the first part, heirs, executors, administrators and assigns, to pay the said party of the first part, as rent for said premises, the sum of Said party of the first part shall have the right to put up notices to rent, and show the premises at reasonable hours, for thirty days prior to the expiration of this lease.

And the said party of the second part further covenants with the said party of the first part, that said party of the second part has received said demised premises in good order and condition, and that

at the expiration of the time in this lease mentioned, or sooner determination thereof by forfeiture, ..he.. will yield up the said premises to the said party of the first part in as good condition as when the same were entered upon by the said party of the second part, loss by fire or inevitable accident or ordinary wear excepted; and also will keep the said premises in good repair during this lease, at own expense.

It is further agreed by the said party of the first part, that neither ..he.. nor legal representatives, will underlet said premises or any part thereof, or assign this lease, without the written assent of the said party of the first part had and obtained thereto.

And the said party of the second part, for executors, administrators and assigns, agree.. further to pay (in addition to the rents above specified), all water rents taxed, levied or charged on said premises, for and during the time for which this lease is granted, and save said premises and the said party of the first part harmless therefrom, and that ..he.. will keep said premises in a clean and wholesome condition, in accordance with the ordinances of the city and directions of the health officers. And it is further agreed that all plumbing, water pipes, gas pipes, and sewerage, shall be at the risk of the said party of the second part.

And, provided the said party of the first part shall pay for any water rent, or for repairs of hydrants, supply or waste pipes, or sewers on said premises which may be ordered by the board of public works, or for the removal of any night soil removed by the order or direction of the board of health or any of its officers, the amount so paid shall be considered as additional rent, and the said party of the first part may collect the same of the said party of the second part in the same manner as other rents under this lease.

It is expressly understood and agreed by and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid on the day of payment whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants or agreements herein contained, to be kept by the said party of the second part, executors, administrators and assigns, it shall and may be lawful for the said party of the first part, heirs, executors, administrators, agent, attorney or assigns, at election, to declare said term ended, and into the said premises, or any part thereof, either with or without process of law, to re-enter; and the said party of the second part, or any other person or persons occupying, in or upon the same to expel, remove and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy as in first and former estate, and to distrain for any rent that may be due thereon upon any property belonging to said party of the second part, whether the same be exempt from execution and distress by law or not; and the said party of the second part in that case hereby agree.. to waive all legal rights which ..he.. now ha.. or may have to hold or retain any such property, under any exemption laws now in force in this State, or in any other way, meaning

and intending hereby to give to the said party of the first part, heirs, executors, administrators or assigns, a valid and first lien upon any and all goods and chattels and other property belonging to the said party of the second part, as security for the payment of said rent, in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, heirs, executors, administrators or assigns, as aforesaid, or in any other way, the said party of the second part, executors, administrators and assigns, do hereby covenant and agree to surrender and deliver up the said above described premises and property peaceably to said party of the first part, heirs, executors, administrators or assigns, immediately upon the determination of the said term, as aforesaid; and if shall remain in possession of the same after such default, or after the termination of this lease, in any of the ways above named, shall be deemed guilty of a forcible detainer of said premises under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated. And the said party of the second part hereby waives right to any notice from said party of the first part of election to declare this lease at an end, under any of its provisions, or any demand for the payment of rent or the possession of the premises leased herein; but the simple fact of the nonpayment of the rent reserved, shall constitute a forcible detainer as aforesaid.

And it is further covenanted and agreed by and between the parties, that the party of the second part shall pay and discharge all costs, attorneys' fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

No. 160. (West Virginia.) LEASE.

This deed, made the day of, in the year, between (names of parties), witnesseth: That the said doth demise unto the said, his personal representatives and assigns, all (describe premises), from the day of, for the term of, thence ensuing, the said paying to the said therefore, during the said term, the rent of (amount and mode of payment). Witness the following signature and seal..

No. 161. NOTICE TO TERMINATE LEASE.

I hereby give you notice, that in pursuance of the power for this purpose given to me by the indenture of lease, dated the day of, and made between you, of the one part, and me, of the other part, it is my intention to determine the lease thereby made, on the day of next, and I shall therefore quit and deliver up possession to you (or, require you to quit and deliver up possession

to me) of the message (etc., here briefly describe the premises).

(Date.)

(Signature.)

(Address.)

No. 162. MARINE PROTEST.

THE UNITED STATES OF AMERICA.

State of, }
County of } ss.

To all People to whom these Presents shall Come or may Concern:

I,, a notary public, in and for the County of, in the State aforesaid, by letters patent, under the great seal of the said State, duly commissioned and sworn, dwelling in, send greeting: Know ye, that on the day of, in the year of our Lord one thousand nine hundred and, before me, the said notary, appeared, master of the vessel called the, of, burthen tons, and noted in due form of law with me, the said notary, his protest, for the use and purposes hereinafter mentioned; and now at this day, to wit: the day of the date hereof, before me, the said notary, at aforesaid, again comes the said, master, and requires me to extend his protest, and together with the said master, also comes, mate and,,,, seamen, belonging to the aforesaid vessel, all of whom, being by me duly sworn, voluntarily, freely and solemnly, do declare and depose as follows, that is to say: That on the day of, 19.., at o'clockM., the said vessel left, in the State of, bound thence to the port of, in the State of, laden with; that the said vessel was then stout, staunch and strong; had her cargo well and sufficiently stowed and secured; was well mastered, manned, tackled, victualled, appareled and appointed, and was in every respect fit for sea, and the voyage she was about to undertake:

And the said master further says, that as all the damage and injury which already has or may hereafter appear to have happened or occurred to the said vessel or her said cargo, has been occasioned solely by the circumstances hereinbefore stated, and cannot nor ought to be attributed to any insufficiency of the said vessel, or default of him, this deponent, his officers or crew. He now requires of me, the said notary, to make this protest and this public act thereof, that the same may serve and be of full force and value, as of right shall appertain. And thereupon the said master doth protest, and I, the said notary, at his special instance and request, do by these presents publicly and solemnly protest against winds, weather and seas,, and against all and every accident, matter and thing, had and met with as aforesaid, whereby or by means whereof the said vessel, or her cargo, already has or hereafter shall appear to have suffered or sustained damage or injury, for all losses, costs, charges, expenses, damages and injury which the said master, or the owner or owners of the said vessel, or the owners, freighters, or shippers of her said cargo, or any other

person or persons interested or concerned in either, already have or may hereafter pay, sustain, incur, or be put into, by or on account of the premises, or for which the insurer or insurers of the said vessel, or her cargo, is or are respectively liable to pay or make contribution or average, according to custom, or their respective contracts or obligations; and that no part of such losses and expenses already incurred, or hereafter to be incurred, do fall on him, the said master, his officers or crew.

This done and protested, in, this day of, 19....

....., Master.

....., Mate.

.....,

.....,

.....,

.....,

Seamen.

In witness whereof, as well the said appearers, as I, the said notary, have hereunto subscribed these presents, and I, the said notary, hereunto attached my notarial seal, the day and year last aforesaid.

.....,

Notary Public.

State of }
.....County. } ss.

I,, a notary public in and for said county, in the State aforesaid, do hereby certify that the foregoing contains a true and correct copy of the original protest entered on record before me, by, master of the, said protest having been noted on the day of, 19...., and extended before me on the day of, 19....

In witness whereof, I have hereunto set my hand and notarial seal, this day of, 19....

.....,

Notary Public.

No. 163. MARINE NOTE OF PROTEST BY MASTER.

THE UNITED STATES OF AMERICA.

State of, County of, ss.

Be it known, that on this day of, 19..., before me,, a notary public for and in the County of, and State of, personally appeared, master of the, or vessel called the, of the burthen of tons, or thereabouts, who declares that he sailed last in the vessel under his command, laden with a cargo of, on the day of, 19..., from the port of, and bound for the port of, in the State of Thus the said master notes this, his protest, before me, reserving to

himself the right to extend the same at any time and place convenient.

Subscribed and sworn to before me, this day of, 19...

Notary Public.

No. 164 MECHANICS' LIEN NOTICE.

To, Esquire, clerk of the city and county of New York:

Sir—Please to take notice, that I,, residing at No., in street, in, have a claim against, of, owner (or contractor) amounting to the sum of dollars, due to, (or if not due, state when it will become due), and that the claim is made for and on account of (here state the ground of claim) furnished and done before the whole work on said building was completed, and which work and materials were done and furnished within three months of the date of this notice; and that such work and materials were done and furnished in pursuance of a contract for, between and, which building is owned by, and is situated in the ward of the city of New York, on the side of street, and is known as No. The following is a diagram of said premises (here insert diagram). And that I have and claim a lien upon said house or building, and the appurtenances and lot on which the same shall stand, pursuant to the provisions of an act of the Legislature of the State of New York, entitled, "An Act to secure the payment of mechanics, laborers and persons furnishing materials towards the erection, altering or repairing of buildings in the city of New York," passed May 5, 1863, and of the acts amending the same.

(Signature.)

(Date.)

No. 165. (California.) MORTGAGE FORM.

This mortgage, made the day of, in the year, by A. B., of, mortgagor, to C. D., of, mortgagee, witnesseth: That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of dollars, on (or before) the day of, in the year, with interest thereon (or as security for the payment of an obligation, describing it, etc.

No. 166. (Indiana.) A MORTGAGE.

A. B. mortgages and warrants to C. D. (describes property) to secure the repayment of (here recite the sum for which the mortgage is granted or the notes or other evidence of debt, or a description thereof, sought to be secured, also the date of the repayment)

No. 167. (Iowa.) MORTGAGE.

The same as deed, adding, "To be void upon condition that I pay," etc.

No. 168. (Oklahoma.) MORTGAGE.

Know all men by these presents, That and, of County, in the of, part.. of the first part, have mortgaged and hereby mortgage to, of County, of, part.. the second part, the following described real estate and premises, situated in County, State of Oklahoma, to wit:....., with all the appurtenances thereto belonging, and warrant the title to the same This mortgage is given to secure the principal sum of dollars, with interest, thereon at the rate of per centum per annum, payable annually, from, according to the terms of certain promissory note, described as follows, to wit:.....

Dated this day of

No. 169. (Tennessee.) MORTGAGE.

I hereby convey to A. B. the following land (describe it), to be void upon condition that I pay, etc.

No. 170. (Tennessee.) TRUST DEED.

For the purpose of securing to A. B. a note of this date, due at twelve months, with interest from date (or as may be), I hereby convey to C. D., in trust, the following property:..... and if the note is not paid at maturity I hereby authorize C. D. to sell the property herein conveyed (state the manner, place of sale, notice, etc.), to execute a deed to the purchaser, to pay off the amount herein secured, with interest and costs, and to hold the remainder subject to my order.

No. 171. (Utah.) MORTGAGE.

A. B., mortgagor (here insert name and residence), hereby mortgages to C. D., mortgagee (insert names and residence), for the sum of dollars, the following described tract.. of land in County, Utah (describe premises).

This mortgage is given to secure the following indebtedness (here state amount and form of indebtedness, maturity, rate of interest, by and to whom payable, and where).

The mortgagor agrees to pay all taxes and assessments in said premises, and the sum of dollars, attorney's fee, in case of foreclosure.

Witness the hand of said mortgagor, this day of, A. D. 19....

No. 172. (Wisconsin.) MORTGAGE.

A. B., mortgagor, of County, Wisconsin, hereby mortgages to C. D., mortgagee, of County, Wisconsin, for the sum of dollars, the following tract of land in County (here describe the premises).

This mortgage is given to secure the following indebtedness (here state amount and form of indebtedness, whether on note, bond or otherwise, time due, rate of interest, by and to whom payable, etc.)

The mortgagor agrees to pay all taxes and assessments on said premises, and the sum of dollars, attorney's fees, in case of foreclosure thereof.

Witness the hand and seal of said mortgagor this day of, 19...

In presence of

..... (Seal.)

..... (Seal.)

(Must be acknowledged.)

No. 173. (Wisconsin.) ASSIGNMENT OF MORTGAGE.

For value received, I, A. B., of, Wisconsin, hereby assign to C. D., of, Wisconsin, the within mortgage (or a certain mortgage executed to, by C. F. and wife, of County, Wisconsin, the day of, 19..., and recorded in the office of the register of deeds of County, Wisconsin, in Vol. of Mortgages, on page), together with the and indebtedness therein mentioned.

Witness my hand and seal this day of, 19...

In presence of

..... A. B. (Seal.)

..... (Seal.)

No. 174. NOTICE OF MORTGAGE SALE.

By virtue of a chattel mortgage executed by to, dated the day of, 19..., and filed in the office of the county clerk of the county of, (or, the town clerk of the town of, or, the register of the city and county of New York), on the day of, 19..., and upon which default has been made, I will expose for sale at public auction, on day, the day of, 19..., at o'clock, in the noon, at (designating the particular place of sale), the property mortgaged, consisting of 187 horses, 35 stages, 16 sleighs, 250 tire bolts, 800 weight of iron, 800 weight of steel, two large iron safes. (The terms of sale to be made known on the day of sale.)

Dated,, the day of, 19....

(Signature of attorney or auctioneer.)

No. 175. CHATTEL MORTGAGE FOR RESIDENT—SHORT FORM.

Know all men by these presents, that, of the Town of, in the County of, and State of, in consideration of the sum of dollars, to paid by, of the County of, and State of, the receipt whereof is hereby acknowledged, do.. hereby grant, sell, convey and confirm, unto the said, and to heirs and assigns, the following goods and chattels, to wit:.....

To have and to hold all and singular the said goods and chattels, unto the said mortgagee herein, and heirs, executors, administrators and assigns, to and their sole use, forever. And the mortgagor herein, for and for heirs, executors and administrators, do.. hereby covenant to and with the said mortgagee....., heirs, executors, administrators and assigns, that said mortgagor lawfully possessed of the said goods and chattels, as of own property; that the same are free from all incumbrances, and that will, and executors and administrators shall, warrant and defend the same to the said mortgagee....., heirs, executors, administrators and assigns, against the lawful claims and demands of all persons.

Provided, nevertheless, that if the said mortgagor...., executors or administrators, shall well and truly pay unto said mortgagee....., executors, administrators or assigns, then this mortgage is to be void, otherwise to remain in full force and effect.

And, provided, also, that it shall be lawful for the said mortgagor...., executors, administrators and assigns, to retain possession of the said goods and chattels, and at own expense, to keep and use the same, until or executors, administrators or assigns, shall make default in the payment of the said sum of money above specified, either in principal or interest, at the time or times, and in the manner hereinbefore stated. And the said mortgagor...., hereby covenant.. and agree.. that in case default shall be made in the payment of the note.. aforesaid, or of any part thereof, or the interest thereon, on the day or days respectively on which the same shall become due and payable; or if the mortgagee.., executors, administrators or assigns, shall feel insecure or unsafe, or shall fear diminution, removal or waste of said property; or if the mortgagor.... shall sell or assign, or attempt to sell or assign, the said goods and chattels, or any interest therein; or if any writ, or any distress warrant, shall be levied on said goods and chattels, or any part thereof; then, and in any or either of the aforesaid cases, all of said note.. and sum of money, both principal and interest, shall, at the option of the said mortgagee....., executors, administrators or assigns, without notice of said option to any one, become at once due and payable, and the said mortgagee...., executors, administrators or assigns, or any of them, shall thereupon have the right to take immediate possession of said property and for that purpose may pursue the same wherever it may be found, and may enter any of the

premises of the mortgagor...., with or without force or process of law, wherever the said goods and chattels may be, or be supposed to be, and search for the same, and if found, to take possession of, and remove, and sell and dispose of the said property or any part thereof, at public auction, to the highest bidder, after giving days' notice of the time, place and terms of sale, together with a description of the property to be sold, by notices posted up in three public places in the vicinity of such sale, or at private sale, with or without notice, for cash or on credit, as the said mortgagee...., heirs, executors, administrators or assigns, agents or attorneys, or any of them, may elect; and, out of the money arising from such sale, to retain all costs and charges for pursuing, searching for, taking, removing, keeping, storing, advertising, and selling such goods and chattels, and all prior liens thereon, together with the amount due and unpaid upon said note..., rendering the surplus, if any remain, unto said mortgagor...., or legal representatives.

Witness, the hand.. and seal.. of the said mortgagor., this day of, in the year of our Lord one thousand nine hundred and
 (Seal.)
 (Seal.)

Sealed and delivered in the presence of

.....

State of..... }
 County of } ss.

I,, a justice of the peace in the Town of, in and for said county, do hereby certify, that this mortgage was duly acknowledged before me by the above named, the mortgagor.. therein named, and entered by me this day of, A. D. 19...

Witness my hand and seal. (Seal.)

Justice of the Peace.

State of }
 County of..... } ss.

.....of said County, being duly sworn, deposes and says: That the lawful owner.. of the goods and chattels described in the within chattel mortgage to which this is attached, and made a part thereof; and that said goods and chattels are free and clear of all liens or incumbrances, except the said mortgage to which this paper is attached. And that there are no judgments or executions against, the said, that affect the title of said goods and chattels named in said mortgage.

By and under the foregoing representation have obtained a loan of (\$.....) dollars, which said chattel mortgage is given to secure the payment thereof, and interest.

..... (Seal.)

Subscribed and sworn to before me, this day of, 19...

.....,

No. 176. RELEASE OF CHATTEL MORTGAGE.

Know all men by these presents, that, of the County of, and State of, do hereby certify, that a certain indenture of mortgage, bearing date the day of, A. D. 19..., made and executed by of the first part to of the second part, conveying certain personal property therein mentioned as security for the payment of dollars and cents as therein stated and recorded in the recorder's office of County, in the State of, in Book, of, on page, on the day of, A. D. 19..... is, with the note.. accompanying it, and the aforementioned debt fully paid, satisfied, released, and discharged.

Witness, hand.. and seal., this day of, A. D. 19...

Certificate follows.

No. 177. CHECK.

Chicago, Ill.,, 19... No.

THE FIRST NATIONAL BANK OF CHICAGO.

Pay to the order of, \$.....
..... dollars.
.....

No. 178. DRAFT OR INLAND BILL OF EXCHANGE.

No. \$..... Chicago, January 1, 19...

Three months after date pay to the order of Thomas Smith & Co. one hundred dollars, value received, and charge to the account of

To Brown Bros.,
Centralia, Ky. A. H. JONES.

No. 179. FOREIGN BILL.

No. Exchange of £100. Chicago, January 1, 19..

Six months after sight of this first of exchange (second and third unpaid), pay to the order of Mr. Don Carlos, one hundred pounds, value received, and charge the same to account of Messrs. Smith & Co. against your letter of credit No. 1.

To Mr. S. Jackson,
London, England. JAMES JOHNSON.

No. 180. CERTIFICATE OF PROTEST

State of }
..... County. } ss.
..... }

Be it known, that on this day of, in the year of our Lord one thousand nine hundred and, I,, a notary public,

duly commissioned and sworn, and residing in the, in said county, and State, at the request of, went with the original which is above attached, to the office of, and demanded thereon, which was refused.....

Whereupon I, the said notary, at the request of the aforesaid, did protest, and, by these presents, do solemnly protest, as well against the of said the indorsers thereof, as all others whom it may or doth concern, for exchange, re-exchange, and all costs, charges, damages, and interest already incurred by reason of the non-..... of the said

And I, the said notary, do hereby certify, that, on the same day and year above written, and within forty-eight hours from the time of such protest, due notice of the foregoing protest was put in the post office at, as follows:

Notice for
 Notice for
 Notice for
 Notice for
 Notice for

Each of the above-named places being the reputed place of residence of the person to whom this notice was directed.

In testimony whereof, I have hereunto set my hand and affixed my official seal, the day and year first above written.

.....,
 Notary Public.

No. 181. NOTICE OF PROTEST OF NOTE.

State of, }
 County of } ss.

....., 19..

Sir:—

A for \$......, dated, payable signed by, indorsed by, being this day due and unpaid, and by me protested for nonpayment, I hereby notify you that the payment thereof has been duly demanded, and that the holders look to you for payment, damages, interest and costs.

Done at the request of
 Notary Public.

To

No. 182. (Mississippi.) PROTEST.

Be it known that I, A. B., a justice of the peace of the County of, at the usual place of of C. D., presented to him the bill or note of which the annexed is a copy, for payment (or acceptance)

which he did not pay (or accept); where as I did protest the said bill (or note); and immediately thereafter I deposited in the post office at, postage paid, a written notice of the protest, directed to E. F., at, which is his known (or usual) place of abode (or business).

Dated at, this day of, A. D.

No. 183. PROTEST.

United States of America, State of New York, ss.

On the 14th day of November, 19.., at the request of Marshall Field, I, Richard Jones, notary public in and for the State of New York, duly commissioned and sworn, dwelling in said City of New York, did present the original promissory note, a copy of which is hereunto annexed, dated the 5th day of July, 19.., for one thousand dollars, to the maker, Thomas Brown, personally, at 500 Broadway, New York City, and demanded payment, which was refused.

Wherefore I, the said notary public, at the request aforesaid, did protest, and by these presents do publicly protest, as well against the maker and indorsers of said note, as against all others whom it may concern, for exchange, re-exchange, and all costs, damages, interest already incurred, and to be hereafter incurred, for want of payment of the same.

And I do further certify that on the 14th day of November, 19.., and after presentment aforesaid, due notice of the protest of the said note was deposited in the post office in the City of New York, and postage prepaid, in time for the next regular mail, addressed to Russell Sage, at Yonkers, Queens County, State of New York, which is his reputed place of residence.

In witness whereof, I have hereunto subscribed my name, and affixed my notarial seal.

Witness:

.....
.....

RICHARD JONES,
Notary Public, 50 Broadway St.,
New York City.

No. 184. COPY OF NOTE.

(Indorsed. Russell Sage.)

\$1,000.

New York, July 5, 19..

One month after date I promise to pay Marshall Field, or order, one thousand dollars, value received.

THOMAS BROWN.

The notary generally retains the original protest, and in case of inland bills and promissory notes, an abbreviated protest, like the following, is attached to the note and returned to the party for whom it is protested: State of New York,
City and County of New York.

Be it known that the promissory note hereunto annexed was this day protested for nonpayment.

New York, Nov. 14, 19...

RICHARD JONES,

Witness:

Notary Public.

.....

.....

This memorandum is attached to the note or bill, and in case action is commenced application is made to the notary for the original protest.

No. 185. PROMISSORY NOTE.

\$300.00.

New York, July 30, 19..

Four years after date I promise to pay John Doe, or order, three hundred dollars, with six per cent. interest per annum, for value received.

No. 5.

THOMAS NOBODY.

No. 186. RECEIPT.

\$300.00.

Received, Chicago, July 1, 19.., of Thomas Smith, three hundred dollars, in full of account.

THOMAS JACKSON & CO.

No. 187. WAIVER ON BILL OR NOTE.

Presentment, demand, and notice waived.

THOMAS JONES.

No. 188. (Illinois.) BOND OF NOTARY PUBLIC.

Know all Men by these Presents, That we,,,, of the County of, in the State of Illinois, are held and firmly bound unto the People of the State of Illinois, in the penal sum of one thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals, this day of, 19..

The condition of the above obligation is such, that whereas, the said has been appointed notary public in and for the County of, residing in the of

Now, therefore, if the said shall perform and discharge all the duties required of him by law, as such notary public, to the best of his skill and ability, then this bond to be void, otherwise to remain in full force.

..... (Seal.)

..... (Seal.)

..... (Seal.)

Approved:

Governor.

State of Illinois, }
County of } ss.

I,, hereby certify that,,, who are each personally known to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, for the uses and purposes therein set forth. Given under my hand and seal, this day of, 19..

.....

No. 189. (Illinois.) NOTARIAL OATH.

State of Illinois, }
..... County. } ss.

I,, do solemnly swear that I will support the constitution of the United States, and the constitution of the State of Illinois, and that I will faithfully discharge the duties of notary public according to the best of my ability.

Subscribed and sworn to before me, this day of, 19..

.....

.....

N. B.—The appointee must sign both bond and oath, and return to the Secretary's office, with official signature, impression of seal (if he has one) at the place indicated, P. O. address, etc. A strict compliance with sections 2, 3 and 4 of chapter 99, Jones & Addington's Ann. Stat. §§ 7838-7840, is required to secure the appointment of a notary public.

No. 190. (Illinois.) NOTARIAL PETITION.

State of,
..... County.
..... of,
....., 19..

To His Excellency,

.....,

Governor of

The undersigned, legal voters of the of, in the County of, respectfully petition that Your Excellency will appoint to be a notary public in and for said county.

Have this petition filled out and signed in ink by fifty legal voters of the city or town in which you reside.

No. 191. (Illinois.) CLERK'S CERTIFICATE OF NOTARYSHIP.

State of Illinois, }
County of } ss.

I,, Clerk of the County Court, in and for said county, do hereby certify that, whose name is subscribed to the proof or acknowledgment of the annexed instrument in writing was, at the time

of taking such proof or acknowledgment, a notary public in and for said county, duly commissioned, sworn and acting as such, and authorized to take the same; and further, that I am well acquainted with his handwriting, and verily believe that the signature to the said proof or acknowledgment is genuine; and further, that the annexed instrument is executed and acknowledged according to the laws of the State of Illinois.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at, in County, this day of, A. D. 19.., Clerk.

No. 192. NOTARIAL REGISTER.

Date of Demand and How	Holder	Copy of Paper	Endorsers	Date of Notice and How	Expenses

No. 193. NOTICE TO QUIT.

I hereby give you notice to quit and deliver up, on the day of next [if the current year of your tenancy expires on that day, or otherwise on the day on which the current year of your tenancy will expire, next after the end of half a year (or, of a quarter year; or, of a month) from the time of your being served with this notice], the possession of the messuage (etc., here briefly describe the property) which you now hold of me as a yearly tenant.

(Date.)

(Signature of Landlord.)

(Address to Tenant.)

No. 194. DECLARATION FOR RESTORATION TO THE PENSION ROLLS OF A PERSON WHOSE NAME HAS BEEN DROPPED UNDER THE ACT OF FEBRUARY 4, 1862.

State of, }
County of } ss.

On this day of, A. D. one thousand nine hundred and, personally appeared before me, the same being a court of record within and for the county and State aforesaid,, aged years, who, being duly sworn according to law, makes the following declaration asking to be restored to the pension rolls; that he is the identical who was pensioned on the rolls of the agency

at, and whose pension certificate No., is herewith returned; that ..he has resided, since the first day of January, A. D. 1861, as follows: 1.....

that during this period means of subsistence have been 2.....

that has not borne arms against the government of the United States, or in any manner aided or abetted the rebellion, or those prosecuting the rebellion, or manifested a sympathy with the cause, but on the contrary, did, during the said rebellion, earnestly desire its suppression by force of arms; that he was last paid pension to the day of, 19.. 3.....

that hereby appoints attorney to prosecute the above claim; that residence is at No., in street, in the of, County of, State of, and that post office address is

(Attest.)

(Claimant's signature.)

Also personally appeared, residing at No., in street, in, and, residing at No., in street, in, persons whom I certify to be respectable and entitled to credit, and who, being by me duly sworn, say that they were present and saw, the claimant, sign name (make mark) to the foregoing declaration; that they have every reason to believe, from the appearance of said claimant and their acquaintance with that is the identical person represents self to be, and that they have no interest in the prosecution of this claim.

(Signatures of witnesses.)

Sworn to and subscribed to before me, this day of A. D. 19..; and I hereby certify that the contents of the above declaration, etc., were fully made known and explained to the applicant and witnesses before swearing, including the words, erased, and the words, added; and that I have no interest, direct or indirect, in the prosecution of this claim.

(L. S.)

(Signature.)

(Official Character.)

¹ Here name the place or places at which the applicant has resided.

² Here name the employment or other means by which a livelihood has been gained.

³ Here insert, if an invalid, "and that the disability for which he was pensioned still continues in a pensionable degree, and that he has not since re-enlisted or been paid in the military, naval, or marine service of the United States"; if a widow or mother, "and she has not remarried since that date," or if remarried, give date.

No. 195. POWER OF ATTORNEY.

Know all men by these presents, that I,, of, in the County of, and State of, do hereby make, constitute, and appoint, of, in the County of, and State of, my true, sufficient and lawful attorney, for me and in my name, to, and to do and perform all necessary acts in the execution and prosecution of the aforesaid business in as full and ample a manner as I might do if I were personally present.

In witness whereof, I have hereunto set my hand and seal, the day of, 19..

.....,
(Signature.)

Signed, sealed and delivered in presence of

.....
.....

No. 196. PROXY TO VOTE.

Know all men by these presents, that,, of, in the State of, do hereby appoint, of, in the State of, to be substitute and proxy, with power of substitution, for and in name and behalf, to vote at any election of the company, and at any meeting of the stockholders of said as fully as might or could were personally present.

In witness whereof, have hereunto set hand.. and seal., the day of, 19..

..... (Seal.)
..... (Seal.)

Signed, sealed and delivered in presence of

.....

No. 197. PRÆCIPE.

Before }
..... }
vs. }
..... }

Demand \$..... Issue summons returnable on the day of, 19.., at o'clock, M., and give the same to constable Defendant at Credit plaintiff with \$..... advance costs.

.....,
Attorney.

State of, }
..... County. } ss.

....., being first duly sworn, on oath says that he is, and that the demand of the plaintiff.. in the above entitled cause is for, and the amount due to said plaintiff.. from the defendant.. in said

cause after allowing to said defendant.. all his just deductions, credits and set off, if any, is dollars and cents.

Subscribed and sworn to before me, this day of, 19..

Notary Public.

No. 198. SUBPÆNA, NOTARY PUBLIC'S.

State of Illinois, }
..... County. } ss. The People of the State of Illinois.

To

You are hereby commanded to appear before me, a notary public in and for said county, at my office, No. Street, in the, in said County, on the day of, A. D. 19.., at o'clockM., then and there to testify the truth in a suit now pending in the Court of County aforesaid, wherein, plaintiff., and, defendant., and this you shall in no wise omit, under the penalty of the law.

Given under my hand, and notarial seal, this day of, A. D. 19..

Notary Public.

No. 199. (New Hampshire.) SUMMONS.

..... ss. To

L. S. You are required to appear at, in the County of, on the day of, to testify what you know relating to, then and there to be heard, in which is and is

Hereof fail not, as you will answer your default under the penalties prescribed by law.

Dated at, the day of,

No. 200. WILL.

I, Thomas Smith, of the County of Kent, and State of Ohio, do make, ordain, and establish this to be my last will and testament, hereby revoking all other wills executed by me. I give and bequeath all my real and personal property unto my beloved wife, Sarah Smith, and I hereby appoint John Jones my sole executor without bonds.

In witness whereof, I have hereunto set my hand and affixed my seal, this 10th day of May, in the year of our Lord, 19..

THOMAS SMITH. (Seal.)

The above instrument, consisting of one sheet, was at the date thereof signed, sealed and delivered by the said Thomas Smith as and for his last will and testament, in the presence of us, who at his request, and in

his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

JONATHAN EDWARDS, Carbondale, Ohio.

HENRY JENKINS, Carbondale, Ohio.

No. 201. WILL.

I,, of, do hereby make, publish and declare this to be my last will and testament, hereby revoking and annulling any other will by me heretofore made or declared.

I bequeath unto my beloved wife, Sarah, all my wearing apparel, to be disposed of in such manner as she may see fit. I also bequeath to her such articles of my household goods and furniture, and such consumable supplies as may be on hand at the time of my death, as she may choose to retain for her own use; and also all the rest and residue of my personal estate, whatsoever, and wheresoever, of what nature, kind, and quality soever the same may be, and not hereinbefore given and disposed of (after paying my debts, legacies, and funeral expenses), I give and bequeath unto my said wife, Sarah, to her own use and benefit absolutely.

And I do hereby constitute and appoint my said wife, Sarah, sole executrix of this my last will and testament without bonds.

In witness whereof, I, James Dick, the testator, have to this, my will, written on one sheet, set my hand and seal, this day of, A. D. one thousand nine hundred and

JAMES DICK. (L. S.)

Signed, sealed, published, and declared by the above-named James Dick, as and for his last will and testament, in the presence of us, who have hereunto subscribed our names at his request as witnesses thereto, in the presence of the said testator, and of each other.

C. D.

B. F.

No. 202. WILL.

I, William Smith, of Chicago, County of Cook, and State of Illinois, declare this my last will and testament.

I will and bequeath unto my beloved wife, Mary Smith, all the personal and real property which I may die possessed of, after the payment of all my just debts.

I hereby appoint my beloved wife my sole executrix, without bond.

In witness whereof, I hereunto set my hand and seal, at Chicago aforesaid, this sixth day of May, one thousand nine hundred and

WILLIAM SMITH. (Seal.)

Signed, sealed, published and declared, etc., as above.

(Two witnesses.)

No. 203. WILL.

Be it remembered, I, William Good, of the City of Cincinnati, Ohio,

a bachelor, being of sound and disposing mind, memory and understanding, do make and declare this my last will and testament.

First—I direct that all my just debts be paid.

Second—I give and bequeath unto the Cemetery of Spring Grove the sum of two hundred dollars, to be invested and the income to be applied to the care of my family burial lot in said Cemetery.

Third—I give and bequeath unto the Old People's Home, in the City of Cincinnati, five thousand dollars, same to be invested and the income applied to the maintenance of said institution.

Fourth—I give and bequeath to my sister, Jane Thompson, the sum of five thousand dollars.

Fifth—I give and bequeath unto my brother, Joseph Good, the sum of five thousand dollars.

Sixth—I give and bequeath to the Law Library Association of Kingston, Indiana, Lots 5 and 6 in Block 4, Simmons subdivision in Section 26, township 35 N., R. 14 E. of P. M. in Bogue County, Indiana. The same to be used for building on a law and miscellaneous library for the use of residents of said city.

Seventh—I give and bequeath one thousand dollars to the purchase of books for said library.

Eighth—I give and bequeath the residue of my estate, real and personal, to such charitable purposes as my executors see fit.

Lastly, I appoint Joseph Cook, lawyer, and my brother, Joseph Good, my sole executors without bonds.

Signed, sealed, &c.

Witnessed usual way.

No. 204. ABSTRACT OF TITLE.

To

The East 10 acres of the South half of North West Quarter of Section 4, Township 39 North, Range 13 East of the 3rd Principal Meridian in Lake County, Illinois.

Note 1—From memoranda relating to sales of public lands in Lake County, Illinois, it appears that a United States patent, dated Oct. 1, 1839, was issued to C. L. Harmon and H. G. Loomis, granting the East 10 acres of Section 4 aforesaid.

Note 2—C. L. Harmon

H. G. Loomis

Harriet, his wife,

to

J. Penfold and

W. Penfold.

Doc. 4,324.

Note 3—Affidavit

by

E. C. Harmon.

Doc. 494,084.

Warranty Deed dated Nov. 3, 1836, recorded Nov. 7, 1836, in Book R., page 220. Consideration, \$1,600. Conveys East 10 acres Section 4 in T. 39 N. R. 13 E. of 3rd P. M., in Lake Co., Illinois.

Acknowledged Nov. 4, 1836.

Subscribed and sworn to Sept. 10, 1883, and recorded Sept. 12, 1883, in Book 1,372, p. 205.

Affiant states (*inter alia*) that he is the

son of C. L. Harmon, deceased; that said C. L. Harmon died on or about Nov. 2, 1868, intestate, and that the mother of the affiant died about the year 1867; that said C. L. Harmon was never married except to the mother of this affiant.

Note 4.

John Penfold and
Phebe Ann,
his wife,
Wm. Penfold and Joan,
his wife,
all of City, County and
State of New York,
to

C. H. Duck.

Doc. 67,699.

Deed dated Feb. 1, 1856; recorded Feb. 22, 1856, in Book 104, page 466.

Consideration, \$4,000.

Grant, bargain, sell, etc., land in Town of Princeton, Lake Co., Ill., to wit: the East 5 acres of Section 4, in T. 39 N., R. 13 E., according to government survey, more or less.

Subject to taxes since 1852. Certificate of acknowledgment dated Feb. 12, 1856, by notary public, State of New York, states that the wives on a private examination, apart from their husbands, acknowledged, etc., but does not say contents of deed were made known to them.

Note 5.

John Penfold
and Phebe Ann
his wife,
and Wm. Penfold,
and Joan,
his wife,
all of New York City,
to

C. H. Duck,
of Cook Co., Ill.

Doc. 18,284.

Deed dated Feb 1, 1856, and recorded March 15, 1872, in Book 67, page 800.

Consideration, \$4,000.

Grant, bargain, sell, remise, alien, convey and confirm land in Town of Princeton, Lake Co., Ill., to wit: West 5 acres of Section 4, in T. 39 N. of R. 13 East, according to government survey, more or less. First parties covenant that the above bargained premises in the quiet and peaceful possession of second party, his heirs and assigns, against all and every person or persons lawfully claiming

or to claim the whole or any part thereof, they shall and will warrant and forever defend, subject to all taxes and assessments levied or assessed on or against said premises since 1852.

Certificate of acknowledgment dated Feb. 12, 1856, by T. H. Lane, a notary public in and for New York City and County of New York, who does not certify that said Phebe Ann Penfold and Joan Penfold were informed of the contents of said deed.

A re-record of deed, recorded Feb. 22, 1856, as Doc. 67,699, in Book 104 of Deeds, page 466, as appears by the recorder's certificate appended to this record.

Note 6.

Charles H. Duck
and wife
to
Wm. S. Davison and
Wm. J. Robertson.
Doc. 71,188.

Quitclaim Deed dated May 21, 1856, and recorded May 22, 1856, in Book 114, page 402.

Convey 3 acres of Section 4, T. 39, R. 13E.

Note 7—It does not appear that any proceedings have been had in

the County or Probate Courts of Lake Co., Ill., in the matter of the estate of Wm. S. Davison, deceased, nor that anything in the relation thereto has been filed for record in the recorder's office of said county.

No. 205. APPLICATION FOR INITIAL REGISTRATION OF TITLE
TO LAND.

State of Illinois, }
County of Cook. } ss.

To the Judges of the Circuit Court of Cook County.
In Chancery sitting:

I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge and belief.

1st. Name of applicant,; age of applicant,; residence,; married to; residence

2d. Application made by

3d. Description of real estate situate in Cook County, Illinois, is as follows:
Estate or interest claimed therein is in fee simple, and is subject to homestead.

4th. The land is occupied by, whose address is
The estate, interest or claim of occupant is that of

5th. Liens and incumbrances on the lands are
Name of owner or holder thereof,; post office address,; amount of claim, \$.....; recorded book, page

6th. Other person., firm or corporation having or claiming any estate, interest or claim in law or equity in possession, remainder (reversion, or expectancy in said land are,; address

Character of estate, interest or claim is

7th. Other facts connected with said land are

8th. Therefore the applicant prays the court to find and declare the title or interest of the applicant in said land and decree the same, and order the Registrar of Titles to register the same, and to grant such other and further relief as shall be according to equity.

.....,
Signature of Applicant.

Subscribed and sworn to before me by the above named
as owner, this day of, 19..

(Seal.)

.....,
Notary Public.

I hereby assent to the registration of the above described real estate as prayed for by, who is my (husband or wife).

.....,
Signature of Husband or Wife.

State of Illinois, }
County of Cook. } ss.

I, a notary public in and for said County in the State aforesaid, do hereby certify that, personally known to me to be the same person whose name is subscribed to the foregoing assent, appeared before me this day in person and acknowledged the said assent as free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal, this day of, A. D. 19..

(Seal.)

.....,

Notary Public.

I hereby assent to the registration of the above described real estate as prayed for by,,

[The Chicago Legal News Co. and Sharp and Alleman's Lawyers' Directory have kindly contributed, partly, to these forms.]

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